

*James N. Shennel*

PROCEEDINGS

OF THE

FOURTH CONVENTION

OF

AMERICAN INSTRUCTORS

OF THE

DEAF AND DUMB:

HELD

AT THE INSTITUTION FOR THE DEAF AND DUMB AND THE BLIND,

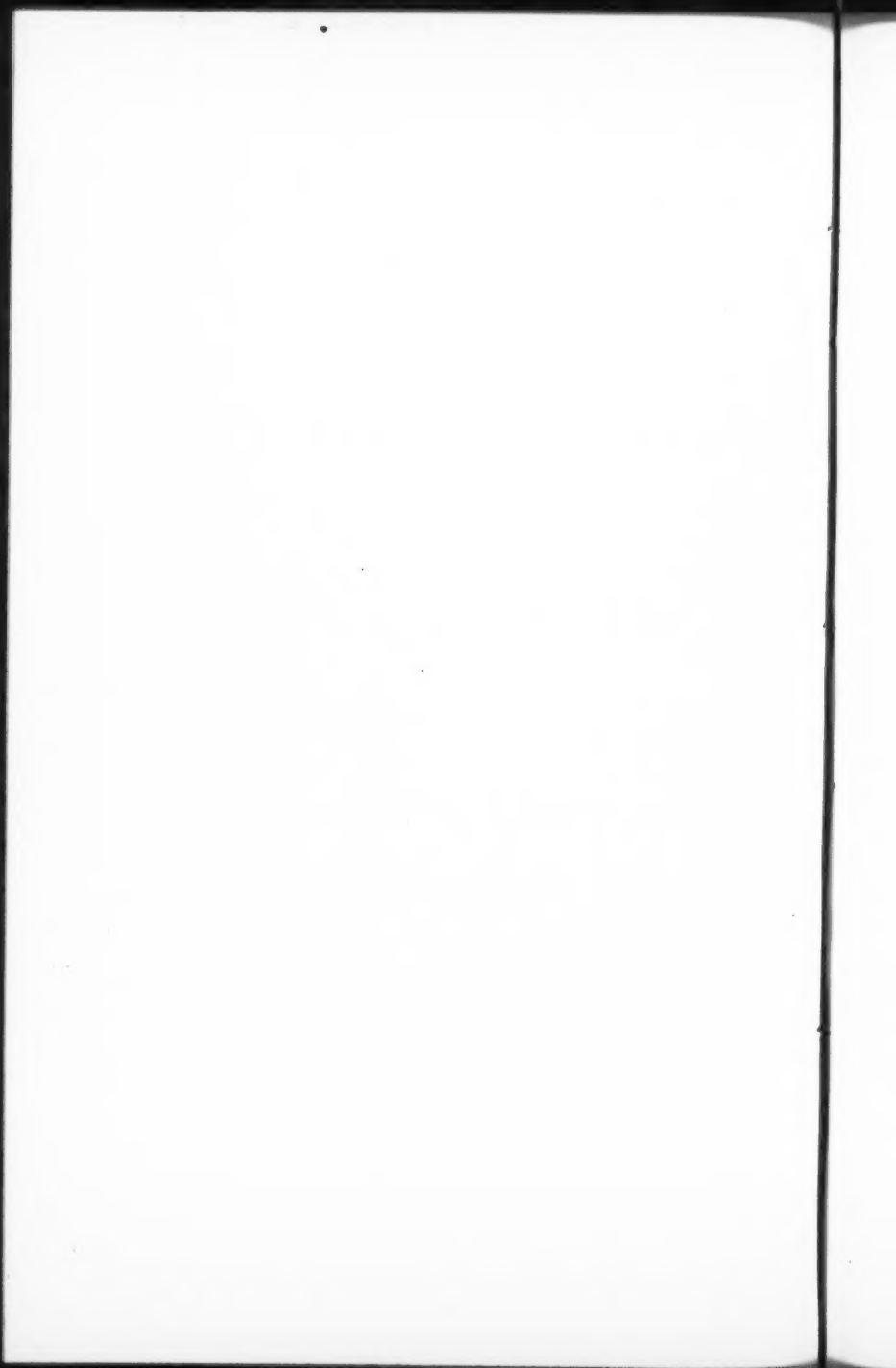
STAUNTON, VA.

August 13th, 14th and 15th, 1856.

RICHMOND:

CHAS. H. WYNNE, PRINTER.

1857.





## PROCEEDINGS.

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FIRST DAY—*Wednesday, August 13, 1856.*

The Convention assembled at 10 o'clock, A. M., preparatory to organization, when

Dr. HARVEY P. PEET, of New York, arose and said: At a Convention of the Instructors and other Delegates of the Deaf and Dumb, assembled at Columbus, Ohio, in 1853, the following resolution was adopted:

*Resolved*, That the invitation presented by the Institution of Virginia be accepted; and that when this Convention adjourns, it adjourn to meet at the Institution for the Deaf and Dumb and the Blind, in Staunton, on the last Wednesday in July, 1855; and that Dr. J. C. M. MERILLAT be the local Committee of Arrangements.

Notice of the meeting of this Convention was given by circular to the several Institutions throughout the country; but, in consequence of the breaking out of an epidemic in this town last year, the Convention was deferred, and the invitations again renewed to meet here this year. I will now read the resolutions of the Board of Visitors, adopted at a meeting held by them, March 20th, 1856, and the circular issued in pursuance thereof, by the authority of the General Committee:

*Resolved*, That the Board regret that the prevalence of an unusual epidemic in this community in July last, prevented the assembling in this Institution of the Convention of Deaf-Mute Instructors, *etc.*, according to appointment.

*Resolved*, That the Board recognize the great advantages to the cause of Deaf-Mute Education to be derived from these Conventions, and do hereby again extend a cordial invitation to all present and former Instructors of Deaf Mutes throughout the Union, and to the Boards of Management of the several Institutions, to meet in this Institution at such a time in the month of August next,

as the Executive Committee of the last Convention may, after consultation, determine upon.

*Resolved*, That our Principal is hereby empowered and requested, in the event of the acceptance of the invitation hereby tendered, to make arrangements with the railroad companies for free tickets to the members of the Convention, and to take all such other steps as may be necessary to secure for them a cordial reception and agreeable sojourn.

*Resolved*, That our principal transmit a copy of these resolutions to the heads of the several Institutions for the Education of Deaf Mutes, with the request that they be communicated to the several Boards, corps of Teachers, and all who may be deemed interested in our humane cause.

(A copy)

Teste:

NICHOLAS C. KINNEY,  
*Secretary.*

Notice is hereby given that the invitation contained in the foregoing resolutions of the Board of Visitors is accepted, and that the Fourth Convention of Instructors and other friends of the Deaf and Dumb, will be held at the Institution for the Deaf and Dumb and the Blind, in Staunton, Virginia, on the *second Wednesday of August next*, at 10 o'clock, in the forenoon.

The persons embraced in this invitation are present and former Instructors of the Deaf and Dumb, Trustees and Directors of Institutions, and State Officers, on whom is devolved the duty of selecting the beneficiaries of Legislative appropriations.

Dr. J. C. M. MERILLAT is the local Committee of Arrangements.

HARVEY P. PEET,  
*Chairman of the General Committee.*

*New York, April 5, 1856.*

Dr. PEET, continuing: This invitation was extended to all the Institutions of the country, and, in accordance with this call, the Delegates from the several Institutions have convened at this time and place, for the purpose of organizing the Fourth Convention of Instructors and other friends of the Deaf and Dumb. With a view, therefore, to carry out the purposes entertained by its friends, I would nominate as temporary Chairman, Dr. F. T. STRIBLING.

The motion was agreed to; whereupon,

Dr. STRIBLING took the Chair.

Dr. PEET—I would nominate as temporary Secretary, Mr. BENJAMIN TALBOT, of the Ohio Institution.

The motion was agreed to.

Dr. PEET—It has been customary at former Conventions to invoke the Divine blessing upon our proceedings, and, with that view, I would ask you to call upon some gentleman present to open this meeting with prayer.

The Rev. Mr. KEEP, thereupon, by invitation of the Chairman, ascended the platform, and offered prayer.

Dr. J. C. M. MERILLAT offered the following resolution:

*Resolved*, That a Committee of three Delegates be appointed to nominate permanent Officers of the Convention, consisting of a President, seven Vice Presidents, and two Secretaries.

The resolution was agreed to, and the following Committee was appointed in pursuance thereof:

Dr. J. C. M. Merillat, Thomas MacIntire, of Indiana, and the Rev. John R. Keep.

The Committee then retired, by permission, to perform the duty assigned to them.

Mr. WM. E. TYLER offered the following resolution, which was adopted:

*Resolved*, That a Committee of four Delegates be appointed to examine the credentials of persons attending the Convention, and to make out a correct list of the same.

The following Committee was appointed for this purpose:

Messrs. Wm. E. Tyler, Philip G. Gillett, Edward M. Galaudet, and J. M. Francis.

Mr. WM. D. COOKE, of North Carolina, then read the following replies to letters of invitation sent to the several Institutions of the country to attend this Convention:

FROM WM. E. IJAMS.

*Institution for the Deaf and Dumb,* }  
IOWA CITY, August 2, 1856. }

*Dear Sir,*—Your kind invitation to attend your Convention has been received. I much regret that it is out of my power to be present. You have my best wishes for a pleasant and profitable meeting. I am happy to be able to state, that the cause of Mute education is prospering in our State. Though so young, our Institution already has numbered about forty pupils, with a gratifying prospect for our next session, to open September 26th.

With many wishes for your personal prosperity,  
I remain, yours truly,

WM. E. IJAMS.

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FROM J. S. BROWN.

*Louisiana Institution for Mutes and Blind,* }  
BATON ROUGE, August 1, 1856. }

*My Dear Sir,*—I deeply regret that it will be impossible for me to attend the approaching Convention of the Officers of Institutions for the Deaf and Dumb at your Institution. The fact, that the session of our school closes on the 15th of August, is the reason of my absence.

Though absent, I shall look to the proceedings of the Convention with a lively interest, and trust they may greatly advance the noble cause in which its members are engaged.

With sentiments of high regard,  
Your ob't serv't,

J. S. BROWN.

To J. C. M. MERILLAT, M. D., Principal Va. Insti. Mutes and Blind, Staunton, Virginia.

FROM B. M. FAY.

*Michigan Asylum for the Education of the  
D. and D. and the Blind,* }  
FLINT, August 2, 1856. }

DR. J. C. M. MERILLAT:

*Dear Sir,*—Yours, inviting me to the Convention to be held at Staunton, on the 13th inst.,—enclosing free tickets on the Virginia Central Railroad and on Orange & Alexandria Railroad—is gratefully received. I exceedingly regret that my engagements are such as to prevent my attendance. I have read the Reports of the Proceedings of your Conventions in past years with great interest and profit; and in this way I expect to derive large compensation for the loss of the privilege of being present at your Meeting at Staunton.

The cause of Deaf-Mute Education in Michigan is yet in its infancy, but highly prosperous. We have just completed one wing of our Asylum buildings, on a plan admirably adapted to its design, and finished in a style highly creditable to the State of Michigan. During the term just closed we have had thirty-seven Deaf and Dumb pupils.

Yours very respectfully,

B. M. FAY,  
*Prin. Mich. Asylum.*

FROM J. M. ALLEN.

(In behalf of Mr. TURNER of the American Asylum, Hartford.)

*Am. Asylum,* }  
HARTFORD, August 11, 1856. }

DR. MERILLAT:

*Dear Sir,*—I am requested by Mr. Turner to inform you, that in consequence of ill-health it will be impossible for him to meet you in Staunton as he had expected.

He wishes me to say, that he regrets exceedingly this unforeseen disappointment; and although absent in body, is present in spirit, and deeply sympathizes with you in all the proceedings of the Convention.

He wishes me to say to you, that he regrets being obliged to forego the anticipated pleasure of becoming better acquainted with yourself, and of meeting those of your assistants whom he has never seen.

Mr. Turner is somewhat better this morning—still quite weak and unable to endure the least excitement.

Respectfully,

J. M. ALLEN.

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FROM ISAAC L. PEET.

INGLESIDE, (near Dunkirk,) New York, }  
August 11th, 1856. }

*To the President of the Fourth Convention of  
American Instructors of the Deaf and Dumb:*

Dear Sir,—I am unwilling to have it supposed that my failure to respond to the call of the General Committee arises from any want of interest in the cause, for the promotion of which the Convention, over which you preside, has assembled, or from any lack of faith in the practical utility of its deliberations. It is seldom that you will meet with a body of men who unite more intelligence and culture, or who are animated with higher zeal and devotion, and there is no cause, which, in its operations, requires more of these qualities, or has a more benevolent object in view. To give ears to the Deaf and understanding and education to those who are excluded from the world of intelligence as well as of sound, is one of the highest exhibitions of practical Christianity, and the success which has attended the efforts thus far made, has established it as a permanent institution in all Christian countries. Those who are engaged in it are regarded as public benefactors, and their labors involve so much of high mental and moral training and of practical wisdom, that they are recognized as occupying a position of equality with the members of any of the learned professions. It is, therefore, a source of deep regret, that circumstances, over which I have no control, will prevent my participating in the deliberations of the Convention. There is, however, one suggestion, which, through you, I should like to make to those present. There are many difficulties to be encountered in the instruction of the Deaf and

Dumb, and the point of departure is so low, and the elevation aimed at so high, that, in many cases, the most experienced instructor meets with disappointment and sometimes yields to discouragement. Many are apt to suppose that this comparative failure proceeds from fundamental defects in the system pursued, whereas, what it actually needs is simply advancing and perfecting. The experience of those who have, for years, been engaged in the work, as well as of those who, learning from such masters, have recently entered upon it with the zeal and freshness of youth, will, I am convinced, by being compared, do more for the cause than any radical changes. At this stage of Deaf-Mute instruction in this country, new theories are not wanted. What I would suggest, therefore, is that the Convention, instead of lamenting the past, should glory in it, and from former successes take fresh hope for the future. Such a spirit entering its deliberations, would infuse new life into all its members and increase the confidence and interest excited by the published records of its proceedings.

With great respect, I am, dear sir,

Your obedient servant,

ISAAC LEWIS PEET.

On motion of DR. PEET, these letters were received and ordered to be filed.

DR. MERILLAT, from the Committee on Permanent Officers, submitted the following report:

*President*—JAS. H. SKINNER, Esq.

*Vice Presidents*—MESSRS. H. P. PEET, C. STONE, S. PORTER, T. MACINTIRE, P. G. GILLET, J. C. M. MERILLAT, and WM. D. COOKE.

*Secretaries*—MESSRS. BENJAMIN TALBOT and EDWARD M. GALLAUDET.

The report was adopted.

Mr. COOKE then offered the following resolution, which was also adopted:

*Resolved*, That a Committee of three be appointed to invite such gentlemen as they may think proper, to sit in this Convention.

The Committee were Messrs. William D. Cooke, J. C. Covell and Samuel F. Dunlap.

Dr. Merillat and Mr. Stone were appointed a Committee to inform Mr. SKINNER of his appointment as President of the Convention, and to conduct him to the chair.

They proceeded to discharge that duty, and after a brief interval entered the room accompanied by Mr. SKINNER, whom they conducted to the chair.

Mr. S. upon taking the chair, said:

*Gentlemen of the Convention:*—I owe, and I tender to you my sincere thanks, for the very unexpected honor you have done me in calling me to preside over your deliberations.

There are many reasons—to which I need not allude—which cause me to feel the deepest interest in your proceedings, and I am ready now, and at all times, to render you all the assistance in my power, and to bid you God speed in your christian labors.

The history of your past, and the realizations of the present, are such as to inspire you with the highest hopes for the future. It has been now some thirty-nine years, if my memory serves me, since the first institution in this country for the education of Deaf Mutes was put into operation. That little seed, sown by the honored hands of one, who is now, alas! no more, aided by another, whose venerable and venerated person we are glad to welcome among us—that little seed has grown into a great tree—a tree “good for food, and much to be desired to make those wise” for whose use it was intended—a tree whose fruits, unlike the tree of knowledge of yore, rest rather under the Divine blessings than inhibitions. But better still—not only has that seed grown into a great tree, but its seeds, in turn, have been wafted by the breath of heaven, throughout the length and breadth of our land; and these seeds, watered by the dews of Divine favor, have grown up into great trees, furnishing a more abundant food, and a yet wider shelter for those, who—since “God loveth whom he chasteneth”—may be regarded as peculiarly God’s own.

Gentlemen, I do not remember ever to have witnessed a more pleasing spectacle than the present. Now, when our beloved country is rent with angry contentions; now, when our Union is rocked from its circumference to its centre; now, when discord seems ready with impious hand to rend asunder a fabric cemented



with so much precious blood—you are gathered here from almost every quarter of that country, upon a mission of pure and unadulterated love and mercy. Your philanthropy is one of most noble aspirations, and most certain in its objects. You understand the subject with which you have to deal, and while your exertions must, without fail, be productive of much good, they cannot by possibility do injury to any. I believe, and I trust that you are animated by that spirit of christian charity—I would that it were less rare!—which “beareth all things, believeth all things, hopeth all things, endureth all things.” God grant that it may never fail!

In conclusion, gentlemen, let me hope that your meetings will awaken among you a generous emulation—the only spirit known to our fathers—an emulation to promote the general weal of the community of institutions which you represent. I again thank you for the honor you have done me, and tender you a cordial welcome to our midst.

The Convention is now ready to proceed to business.

Mr. O. W. MORRIS, of New York, offered the following resolution:

*Resolved*, That a Committee of three be appointed to prepare a report on the order and the form of business to be submitted to this Convention, and to report rules for its government.

The resolution was adopted, and the following Committee was appointed: Messrs. O. W. Morris, Collins Stone and Samuel Porter.

The Committee then retired—meanwhile Dr. PEET arose and said:

*Mr. President*:—This Convention is composed of delegates from different institutions—those who can hear and speak, and those who are deaf and dumb. It is very desirable that all should be allowed an opportunity of participating in its proceedings, and it is manifestly impossible for a certain portion of the delegates to take any part in the exercises, unless they can be informed what these exercises are. The portion I refer to, are the Deaf and Dumb. And as it has been customary on former occasions to appoint a gentleman who can hear and speak, to report or interpret the proceedings *pari passu* to those who are Deaf and Dumb, in order that they may be able to understand what is going on, and to express their views in relation to any

measure that may be presented, I would nominate, with the permission of the Convention, Mr. Edward M. Gallaudet to act as interpreter of the proceedings of the Convention, to those who cannot hear nor speak.

Mr. GALLAUDET—As being the youngest teacher present, I would ask to be excused.

Dr. PEET—I think there is a propriety in this appointment. He is the son of the gentleman who first introduced the art of instructing the Deaf and Dumb into the country. He has a facility in the language of signs, which is possessed by no other speaking teacher here, inasmuch as he learned the sign language before he learned speech; the former is therefore literally his mother language.

Mr. MACINTIRE—I would move as an amendment to the motion of Dr. PEET, that Mr. J. M. Francis of Ohio, be appointed assistant interpreter.

Mr. GALLAUDET—I wish to state my reasons for declining the acceptance of this office. Although, as has been said, the Mute language has been the first probably taught me, yet it is now but six months since I commenced teaching, and I therefore feel that others more experienced would be better suited to the position. I would regard it as a personal favor to be excused from acting.

The question on excusing Mr. Gallaudet was put and decided in the affirmative.

Mr. MACINTIRE—I move that Mr. Gillett, of Illinois, and Mr. Francis, of Ohio, be appointed interpreter and assistant interpreter respectively.

The motion was agreed to.

Mr. FRANCIS asked to be excused.

The Convention refused to excuse him.

Mr. MORRIS, from the Committee on Rules, submitted the following report:

## RULES.

I. The members of this Convention present at any time appointed for a meeting, shall constitute a quorum for all purposes of general discussion and debate and of adjournment.

II. The President, or one of the Vice Presidents, or in their

absence, a member chosen by the majority for that purpose, shall preside at each meeting of the Convention.

III. The proceedings of each meeting shall be in the following order :

1. Reading of the Minutes of the previous meeting.
2. Reports from Committees.
3. Reading of Communications.
4. Unfinished Business.

IV. All Committees shall report in writing.

V. Every resolution shall be reduced to writing and subscribed by the name of the member offering the same.

VI. At all meetings of the Convention, the rules of proceeding shall be those contained in Jefferson's Manual, except in those cases herein specially provided for.

The report was adopted.

Mr. COLLINS STONE offered the following resolution, which was adopted :

*Resolved*, That Delegates be requested to report in writing to the Committee on Business, the titles of papers which they wish to submit to the Convention.

DR. MERILLAT read the following Communication from the Board of Directors of the Western Lunatic Asylum :

· STAUNTON, VA., August 12, 1856.

At a meeting of the Board of Directors for the Western Lunatic Asylum, convened this day, it was

*Resolved*, That the Convention of Deaf-Mute Instructors, &c., which is to meet at the Institution on the morrow, are hereby respectfully invited to visit the Asylum at such time as they may indicate as agreeable.

WM. H. WATTS,  
*Clerk of the Board.*

To Dr. J. C. M. MERILLAT, Principal of D., D. and Blind.

On motion it was referred to the Business Committee.

Dr. PEET—I move the reconsideration, and for this reason: that it would be more gracious to accept the invitation, and then refer to the Business Committee the question of time and arrangement.

The question on reconsidering the vote, by which the Communication was ordered to be referred to the Business Committee, was decided in the affirmative.

Dr. PEET—I move now that the invitation be accepted, and that it be referred to the Business Committee to arrange the time and manner of visiting the Asylum.

The motion was agreed to.

Mr. MORRIS, from the Committee on Business, submitted the following report:

The Business Committee report that the following subjects were referred to Committees at the Convention in Columbus:

I. On the Legal Responsibilities of the Deaf and Dumb. *Committee*—Messrs. Stone, Peet and Andrews.

II. On a Syllabic Alphabet. *Committee*—Messrs. Peet, Bartlett, Cary and Burnet.

III. Mortality of the Deaf and Dumb. *Committee*—Mr. Porter.

IV.—1. The Trades taught at the different Institutions in the United States, their advantages and disadvantages; their fewness of variety, and their influences on the intellectual progress of the pupils.

2. The necessity of inculcating steady habits of industry on the male pupils.

3. The Trades and Professions of the Mute graduates.

4. Their Wages and Salaries. *Committee*—Messrs. Stone, Van Nostrand and Rae.

V. On the establishment of a Depository of Works on Deaf-Mute Education. *Committee*—Messrs. Turner, Peet and Brown.

VI. The subject of Grammatical Symbols. *Committee*—Messrs. Turner, Isaac L. Peet and C. Stone.

VII. New Manual Alphabet. *Committee*—Messrs. Peet, Bartlett, Cary and Burnet.

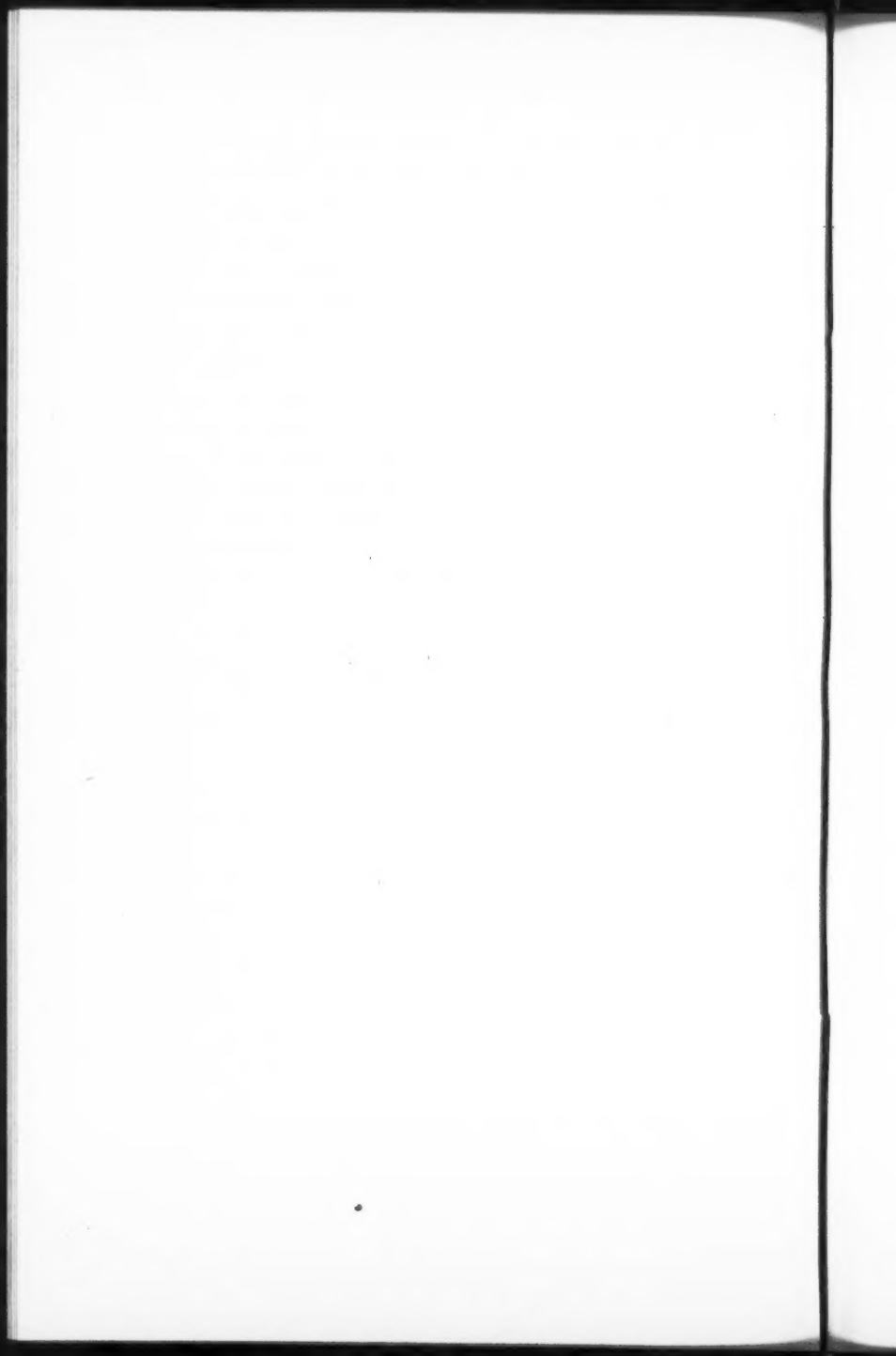
VIII. On the Publication of Proceedings. *Committee*—Messrs. Stone, MacIntire and Keep.

Dr. PEET—Before submitting the report on the Legal Responsibilities of the Deaf and Dumb, I deem it proper to say, Sir, that I am not the Chairman of that Committee, nor was it my expectation to prepare the report. But it has so happened,

from the circumstances of the case, that I felt that I should make the attempt, else there would be a failure to report on the subject.

It was my expectation, that this report would have been prepared by a legal gentleman of New York, in time to have been presented a year ago to the Convention, which, it was expected, would assemble here at that time. Business engagements, however, prevented that gentleman from giving it the necessary attention. A very short time before the Convention was to meet, I undertook the labor, and having made the effort, found it was by no means such a report as was agreeable to myself. The Convention having been postponed, I undertook the subject anew, and I must say, it has occupied no inconsiderable portion of my leisure hours during the past year. After the report was drawn up, it was put into the hands of the Hon. Chas. P. Daley, of New York, for his revision, and I take great pleasure in acknowledging my indebtedness to him for certain parts of the report. I cannot refrain, on this occasion, from returning him my sincere thanks, and expressing my high respect for his eminent character as a scholar and a jurist.

With this explanation, I shall proceed to make the following report:



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REPORT  
ON THE  
LEGAL RIGHTS AND RESPONSIBILITIES  
OF THE  
DEAF AND DUMB.

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SUBMITTED BY DR. PEET.

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## REPORT ON THE LEGAL RIGHTS AND RESPONSIBILITIES OF THE DEAF AND DUMB.

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SUBMITTED BY DR. PEET.

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At the Third Convention of Instructors of the Deaf and Dumb, convened at Columbus, Ohio, in 1853, "the first part" of a communication from Mr. J. R. BURNET, of New Jersey, "relating to the Legal Responsibilities of the Deaf and Dumb, was referred to a Committee of three," who "were instructed to report at the next Convention." (Proceedings, p. 198.) In obedience to these instructions, your Committee submit the following

### REPORT:\*

The paragraphs referred to us, by the above-cited resolutions, were in these words, (Proceedings, p. 195,) "Would not it be well to submit to a Committee the subject of the Legal Responsibilities of Deaf Mutes, in so far as they are affected, either by the mere absence of hearing, or by the inability to understand and use written language? You know there are many Deaf Mutes, who, though quite intelligent and well developed, both morally and intellectually, are still very imperfectly conversant with written language, or not at all.

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\* After this paper was written, the manuscript was put into the hands of the Hon. Charles P. Daly, Judge of the Court of Common Pleas in the city of New York, for his revision; and I take great pleasure in acknowledging my indebtedness to him for the reference to the Oriental Code, and to English and American common law cases herein cited, and also for the quotations from Bracton and Fleta. In making this acknowledgment of the obligation under which I rest to Judge Daly, I cannot refrain from expressing my high respect for his eminent character as a scholar and jurist.

H. P. P.

"Now, in the case of those who cannot read and write at all, I believe the rule of the law would be to employ sworn interpreters familiar with their modes of communication. But, in the case of those who read and write imperfectly, there is danger, on the one hand, that they may be deprived of important civil rights; and, on the other hand, that wrong may be done to, or advantage taken of them, either by design or through misunderstanding. It would be well, therefore, to explain what precautions should be employed to make it certain that such persons sign legal or business papers understandingly, and that they perceive the force and point of interrogatories which they may be called on to answer.

"Another point for examination is, what is the mode in which a person profoundly deaf, and having little or no skill in the language of signs, or having no interpreter who understands signs, but understanding writing perfectly, should take a judicial oath, or assume any legal obligation?"

The questions referred to us are obviously of no small importance, and it is remarkable that they have hitherto received so little consideration from our profession, in America at least, and that so little pertinent to the inquiry before us can be found in English and American jurisprudence. Our statute books, except in provisions for their education, are silent respecting the Deaf and Dumb, and cases bearing on the questions submitted to us, are rare in our law books. In the French, and perhaps in the German works on the Deaf and Dumb, and on medical jurisprudence, the subject before us is more fully and satisfactorily discussed and illustrated, than it is in our own language. Some foreign codes also, like the Roman Code of Justinian, embrace positive enactments respecting the Deaf and Dumb. Though what was law in Rome, or is law in France and Germany, is not law in the United States; still, as in the absence of positive enactments, we have to be guided by the general principles of justice and jurisprudence, it will be instructive and useful, as well as interesting, to know what views of the several questions before us, or involved in our subject, have been, after careful research and mature deliberation, solemnly put forth in other countries, or in other ages of the world. And the value of such lights as may be shed on our subject from the labors of foreign jurists will be the greater, that in the few English and Ameri-

can cases we have, there seems to be little uniformity of principle. Of statute law, relating to the legal rights and liabilities of the Deaf and Dumb, we have found nothing,\* and the common law remains to be settled. Let us hope that it will prove fortunate that its settlement has been reserved for an age of greater light and liberality of sentiment, and of juster views of the peculiar condition of this exceptional class of persons.

We find but very little respecting the Deaf and Dumb in any code of laws before the celebrated Code of Justinian, promulgated in the sixth century of our era, which, in later ages, became the foundation of most of our modern European jurisprudence. The law of Moses (the most ancient code extant) imposes no disqualifications on the Deaf, and mentions them only to forbid, in the name of Jehovah, those impositions on the unfortunate to which their infirmities might incite the vicious or the unthinking. "Thou shalt not curse the deaf, nor put a stumbling block before the blind, but shalt fear thy God. I am the Lord."†

After a diligent search through the Oriental codes, the earliest monuments we have of jurisprudence, very little was found relating to this class of persons, except among the laws of the Hindoos. In the ordination of the Pundits, or code of Gentoo laws, whoever was "Deaf from his mother's womb," or whoever was Dumb, was classed among the persons incapable of inheritance. (Halked's translation of the Gentoo laws from the Persian and Sanscrit, London, 1776.) Though excluded from inheriting, they were not however left unprovided for, but the person who superseded them in the inheritance was bound to support them; in the language of the ordinance, to allow them clothes and victuals. Whether or not they were allowed to

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\* Since writing the foregoing, our attention has been called to the laws of Georgia, which will be hereafter cited.

† Leviticus, xix. 14. It is somewhat remarkable that the law of Moses does not specify deafness and dumbness among the blemishes which disqualified the sons of Aaron from serving in the priest's office. (See Leviticus, xxi. 17-21.) Blindness, lameness, personal deformity, and some other defects were specified; but if the deaf, or even the idiotic and insane were excluded, it was by implication, not by direct precept. Was this omission because these infirmities were less common in those days than they have become in later times, or because the mere want of intelligence would sufficiently prevent the Deaf Mute or idiot from claiming the priest's office?

marry, does not appear, but as the code provides that the sons of all those who are excluded from the inheritance, may, if free from all objection, inherit the share to which their parent would be entitled, it is possible that the Dumb, or those "Deaf from their mother's womb" were not positively interdicted from marrying.

It is usually taken for granted that, under the laws of Lycurgus, Deaf-Mute children shared the fate of the sickly and deformed; but this may be doubted. The institutions of Lycurgus were designed to form a nation of soldiers, and all children who were judged incapable of becoming soldiers, or mothers of soldiers, were ruthlessly exposed to death; but it does not follow that Deaf Mutes merely as such, fell under this inhuman doom. Seldom deficient in animal courage, and often excelling in that quickness of eye and hand so valuable in a hand to hand struggle, Deaf-Mutes, though not adapted for scouts or sentinels, still might have stood in the foremost ranks of the phalanx, undistinguishable in battle from the best soldiers who possessed hearing and speech.

We can, in the absence of any further positive information as to the laws of the ancients, easily divine what the general practice must have been, by considering what is, at this day, the social condition of most uneducated, and of many partially educated Deaf-Mutes. Unable to communicate with any but their immediate relatives, and more intimate acquaintances, knowing but little of what is going on in the community, and ignorant of statute laws, and of legal forms and proceedings, their degree of intelligence very seldom correctly appreciated, or their rights understood, they remain for life practically in the condition of children or minors. If affectionate and docile, they remain in the family, mere drudges—treated we are happy to believe, in most cases humanely and affectionately, but seldom receiving that equitable reward for their labor, or equitable division of inherited property, which could not be withheld from one knowing, and able to claim publicly his rights. If on the contrary, they grow up to be perverse, suspicious, and of unsteady habits, the natural results of injudicious indulgence, they often become vagrants, depending for support on the compassion of their acquaintances, or an occasional days' work, eked out by beggary and theft. In the former condition undoubtedly the

happiest, the law never has occasion to notice a Deaf Mute, except in rare cases, when he may be the legal inheritor of property so considerable, that his self-elected guardians may attempt to secure it by means which other relatives may think it a promising speculation to call in question. In the latter case, his transgressions, though we shall hereafter cite some terrible exceptions, are seldom greater than those of idle boys, and are, for the most part, overlooked through compassion for his infirmities. Cases sometimes occur in which uneducated Deaf Mutes evince an ability to manage their own affairs, and even acquire property by their own industry; but this is rare. The greater number remain by general consent, as is the case with idiots, in a state of perpetual tutelage. Hence we may suppose that, in those times when a system of laws and jurisprudence is slowly forming, while as yet, each little community in the State deals with rare or novel cases according to the instincts of the national common sense, Deaf Mutes would be practically treated, not according to any arbitrary rule, made or intended to be made for the greater number of cases, and, of course, unjust to the exceptional cases, but according to the degree of intelligence actually manifested in each individual case.

Though the *principle* just stated is evidently in accordance with reason and justice, still, in its practical application, there is great room for error. The magistrate before whom such cases might be brought, is seldom well qualified to judge of the actual degree of intelligence of the Deaf Mute, and is usually unable to interrogate him even as to his actual wishes. It was probably the occurrence of cases in which, by taking the representations of interested parties as to the degree of intelligence, or even the actual purpose of the Deaf Mute, injustice had been done, that prompted the provisions of the Code of Justinian. In this celebrated code, the Deaf and Dumb from birth, are, without exception, and without regard to the degree of their intelligence, condemned to a perpetual legal infancy. The code assumes throughout that Deaf Mutes from birth are incapable of managing their own affairs; in this respect being considered as on a footing with the insane, and those who were incapable of managing their own affairs through the affliction of permanent disease; and hence, like them, were to be placed under guardianship. *Mente captis, et surdis, et mutis, et qui perpetuo morbo*

*laborant, quia rebus suis superesse non possunt, curatores dandi sunt.* (Digest, lib. i, tit. xxii, De Curatoribus, § 4.)

Degerando\* observes that the Roman laws, before the time of Justinian, while they preserve an absolute silence with regard to the Deaf and Dumb, speak often of those who are deaf without being dumb, or dumb without being deaf; because, no doubt, persons thus afflicted, being able to manifest, either by speech or by writing, their intelligence and their wishes, still are unable to comply with the legal forms prescribed for those who both hear and speak, and therefore stand in need of exceptional provisions on the part of the lawgiver. Those who were both deaf and dumb were left, as we have already remarked, to be treated according to the discretion of the magistrate, in view of the intelligence they might manifest. The probability is, that the Code of Justinian did but reduce to express enactment and to the form of a general rule, what had previously been the usual practice.

The celebrated code in question furnishes, in its classification of the Deaf and the Dumb, a striking proof of the imperfect and erroneous notions then prevalent respecting Deaf Mutes. The legislator establishes five classes: 1. The Deaf and Dumb with whom this double infirmity is from birth: 2. The Deaf and Dumb with whom this double infirmity is *not* from birth, but the effect of an accident supervened in the course of life: 3. *The Deaf person who is not dumb, but whose deafness is from birth*: 4. The individual who is simply deaf, and that from accident: 5. Finally, he who is simply dumb, whether this infirmity be in him congenital, or the effect of an accident. It is hardly necessary, in this age, to observe that the third class existed only in the imagination of the legislator. To this point we shall again recur.

Different provisions were made to suit the cases of each of these five classes. We cite the original on the first class:

"Discretis surdo et muto, quia non semper hujusmodi vitia sibi concurrent, sancimus, si quis utroque morbo simul laboret, id est, neque audire, neque loqui possit et hoc ex ipsa natura habeat, neque testamentum facere, neque codicillos, neque fidei commissum relinquere, neque mortis causa donationem celebrare concedatur, nec libertatem, sive vindicta, sive alio modo im-

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\* De l'Education des Sourds—Muets de naissance, I. 24.

nere; sidem lege tam masculos quam feminas obedire imperantes." Code, lib. vi, tit. xxii, § 10.

Thus we see, that while the faculty of acquiring property, whether by inheritance or otherwise, was not denied to the Deaf and Dumb, they were debarred from that full control of their property conceded to other men. It appears, from the provision before cited, that they could only buy and sell by the aid of a *curator*, or guardian; and the law just cited denies to them the power of altering the descent of property, or of making a gift, even with the assistance of a *curator*, in any of the modes recognized by the Roman law. They could not make a will or a codicil; nor create a trust estate, nor make a donation contingent on the death of the donor, nor emancipate a slave. But to the second class, those, to wit, who were deaf and dumb by accident, all the rights were restored that were denied to the first class, provided they were able to manifest their wishes by writing.

"Ubi autem et hujusmodi vitii non naturalis, sive masculo, sive feminae accidit calamitas, sed morbus postea superveniens et vocem abstulit et aures conclusit: si ponamus hujusmodi personam literas scientem; omnia quae priori interdiximus, haec ei sua manu scribenti permittimus."

It is worthy of remark, that only Deaf Mutes of this second class are supposed capable of receiving instruction. Cases, we cannot doubt, occurred in the Roman times, as well as in our own, in which persons who had learned to read and write in childhood, subsequently became deaf, and in consequence dumb. It was doubtless to meet such cases that the law before us was framed. But as in those times no cases were known of persons deaf and dumb from birth becoming able to read and write, (*litteras scientem*,) the legislator does not even provide for the possibility of one of this class receiving instruction in letters. It was then held, even by the wise and learned, that Deaf Mutes from birth were wholly incapable of instruction: indeed, the futility of attempting to instruct them seems to have become proverbial; and it may possibly have been considered by the authors of the Roman Code, that an exception of this kind in favor of this class of persons, might lead to attempts to pass their mere mechanical writing, from a copy before them, the



purport of which they knew not, for a valid expression of their own intelligent wishes.

It seems to us strange that the authors of this code should suppose the dumbness of Deaf Mutes to be a direct consequence of disease, and not, as we now know it to be, a mere consequence of deafness. "*Sed morbus et vocem abstulit et aures conclusit.*" This supposition appears more prominently in the section of the law relative to the third class—those, to wit, who were supposed deaf from birth, yet able to speak.

"*Sin autem infortunium discretum est, quod ita raro contingit; et surdis, licet naturaliter hujusmodi sensus variatus est, tamen omnia facere et in testamentis, et in codicillis, et in mortis causa donationibus, et in libertatibus, et in omnibus aliis permittibus. Si enim vox articulata ei a natura concessa est, nihil prohibet eum omnia qua voluerit facere.*"

Here the legislator supposes a class of persons who are deaf from birth, but who, notwithstanding, have received from Nature the gift of speech! He indeed adds that this rarely happens, (*quod ita raro contingit*;) but this mere legislating for a case which we now know cannot possibly occur, strikingly shows how wide of the truth were then the notions of even the learned and profound concerning the Deaf and Dumb. In vain had Pliny, (as the prince of Greek philosophers had done before him,) in a work of high reputation, distinctly stated, that "The man to whom the sense of hearing is denied, is deprived by that defect itself of the usage of speech; there is no person deaf from birth who is not also dumb."\* The popular opinion that deafness and dumbness were distinct defects, usually, indeed, found united, but sometimes the one, even if from birth, existing without the other, is here found to influence the legislation of an empire embracing nearly all the then civilized world.

We cannot suppose the counselors of Justinian to have been ignorant of the fact, shown by constant experience, that children learn language from their elders, through the ear; but there seems to have been a prevalent idea, that not merely the faculty of learning to speak, but speech itself, was a gift of Nature, inherent in man as a reasonable being, and that, as the first men possessed language without having learned it from

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\* Pliny, Hist. Nat. x. 69.



elders, as they had no elders; so children, whose organs of speech were not defective, might naturally possess speech, though they had never heard the speech of others. It is, however, remarkable, that the Roman lawgiver should suppose that this natural gift of speech would be the very speech of his own countrymen; else, supposing a deaf child to speak, how should it be understood? If it be supposed that children may speak without having heard the speech of others, it is obviously more natural to suppose, with the old Egyptian king, Psammetichus, that they would speak the language of some primitive race of men, than that they would speak a language intelligible to those around them.

This third regulation is terminated by an explication which is itself very curious. The lawgiver says: "*Quia scimus quosdam jurisperitos, et hoc subtilius cogitasse, et nullum esse exposuisse, qui penitus non exaudiat, siquis supra cerebrum ejus loquatur, secundum quod Jubentio CELSO placuit.*"

From this we learn, that it was in those days held by some that all Deaf Mutes might be made to hear, (and it seems to have been assumed that to hear must be to understand,) by speaking to them in a certain manner over the top of the head. It is probable that, in many cases of partial deafness, this opinion was confirmed by experiment; but we may safely assert that, though persons who had become too deaf to distinguish words at the ordinary distance of conversation might recognize them when thus spoken, Deaf Mutes from birth—if they heard the words at all—would be sensible of only a confused noise. A contrivance that might enable a Deaf Mute, whose deafness was not total, to hear words, would no more enable him to understand them than a pair of spectacles, or the couching of a cataract, would enable one to read who had not previously learned to read. In some few cases of partial deafness, speech might, with pain and labor, be taught by often speaking to the Deaf Mute in the mode under consideration; and in a greater number of cases, it might enable the patient to guess tolerably well at words already known; but in far the greater number of cases, the degree of hearing thus procured, if any, would be much too feeble and indistinct, to be of use for instruction or conversation by vocal speech.

We are not to suppose, however, that the annexing this obser-

vation to the law before us, proceeded from an idea that some Deaf Mutes from birth could be taught to speak by speaking to them over the top of the head. Nothing of the kind, so far as we know, was ever accomplished, or even attempted, in Roman times. It is to be regarded as only the manifestation of another phase of the popular notions respecting speech. It is natural to believe that the furniture of the minds of our neighbors, and the texture of their thoughts, are like those of which we are ourselves conscious—as natural, and as erroneous, as to believe that the earth is at rest, while the heavenly bodies perform daily revolutions round it. Hence, as we are not conscious of reflecting and willing otherwise than by the aid of words, of an internal speech, we conclude that all rational beings must possess a like internal speech. And our Roman lawgiver, who so obviously makes the possession of verbal language a test of intelligence, supposed that this faculty of internal speech might, in cases where the ears are closed, be reached through the top of the head.

The general principle that runs through the provisions and mistakes of Justinian's code, evidently is, that there can be no valid contract made, or assent given, except by means of words, spoken or written. The Deaf Mute, who could only make his will known by gestures, was treated like a child, who might indeed buy and sell in the markets, but was interdicted from such grave acts as changing the descent of lands, or emancipating a slave. This *interdiction* is repeated later in the Institutes: "Item surdus et mutus non semper testamentum facere possunt; utique autem de eo surdo loquimur, qui omnino non exaudit, non qui tarde exaudit; nam et mutus is intelligitur, qui eloqui nihil potest, non qui tarde loquitur. Sæpe enim literati et eruditi homines variis casibus et audiendi et loquendi facultatem amittunt. Unde nostra constitutio etiam his subvenit, ut certis casibus et modis secundum normam ejus possint testari aliaque facere, quæ eis permissa sunt."\*

Under the reign of a code of laws so precise and formal, some special provision would have been necessary to give legal effect to the wishes of those who, though profoundly deaf, were still able to speak intelligibly, but not to write.

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\* Instit. lib. ii, tit. xii, *quibus non est perm. fac. test.*

Disqualifications similar to those of the Code of Justinian were established by the laws of the feudal monarchies of Europe; and in some cases they even went beyond the Romans, by declaring a deaf and dumb person incapable of succeeding to a fief, or other inheritance. The Code of Justinian did not debar a Deaf Mute from the succession, nominally at least, to an inheritance, but only incapacitated him from changing the descent, so that it passed to the next legal heir at his death; but the codes or customs of some mediæval realms of Europe (like the Hindoo Code) set aside the Deaf Mute altogether, and vested the inheritance in the next heir at once. Yet, we remark, with some surprise, that Carpzovius, in his *Definitiones Forenses ad Constitutiones Electorales Saxonicas*, etc. (1663,) after laying down the definition, "Mutus et Surdus vel aliter imperfectus in feudo non succedit," adds, "De feudo tamen novo mutum et surdum vel aliter imperfectum Dominus bene investire potest." It is easy to see why a Deaf Mute should be judged incapable of succeeding to a fief, the holder of which was not only bound to military service as a leader of troops, but was usually in his own territories a civil and criminal judge; but we should suppose the same reasons would oppose the conferring a new fief on a person in that condition. The contradiction may, perhaps, be reconciled, by supposing that the former was the general rule, and the latter designed to operate as a rare exception in favor of Deaf Mutes of noble race, who may have displayed an intelligence greater than is usual in persons so afflicted; but this exclusion of Deaf Mutes from certain rights of inheritance does not appear to have been general, else the provisions to prevent this class of persons from alienating property, would have been nearly if not quite supererogatory.

Having thus passed in review all that we have found in ancient jurisprudence respecting the Deaf and Dumb, we will now turn our attention to the light in which they have been viewed under the common law of England. The Roman civil law is still of great authority in Continental Europe, and the foundation of most of their present codes; but the common law of England is a distinct and different system, lying at or constituting the foundation of the jurisprudence of England and of the United States.

In the treatise of Glanville, supposed to be the first elemen-

tary work on the common law, written in the reign of Henry II., towards the close of the twelfth century, nothing is said respecting the legal rights, disqualifications or responsibilities of the Deaf and Dumb. Though this work is but a very loose and general summary of the law of England, as it then existed, it is presumed that the law made no provisions respecting this class of persons; for in the Norman Code, which, after the Conquest, made part and parcel of the law of England, but four impediments to the succession of heirs are recognized—Bastardy, Profession of Religion, Forfeiture, and incurable Leprosy. (Le Grand Custum de Norm. 27.) Nearly a century after Glanville, in the reign of Henry III., appeared the more elaborate and learned work of Bracton on the Laws and Customs of England; and, in this treatise, the Deaf and Dumb are referred to as a class of persons who are not entitled to the same rights and privileges as other subjects. It would appear from Bracton, that they could not inherit as heirs, or participate in the inheritance. (Bracton, lib. v, De Exceptionibus, cap. 26, § 3, fol. 430; cap. 20, § 2, fol. 421.) He draws a distinction, however, between those who are Deaf and Dumb from birth, and those who have become so through accident or other cause, after having had the use of their natural faculties; and he says, that those who can hear, though with difficulty, and those who have merely some impediment of speech, are not to be considered as under the legal disabilities existing in the case of the Deaf and Dumb from birth. Those, he says, who are naturally Deaf and Dumb cannot acquire any thing, or enter into any obligation or contract; for as they cannot hear what is said to them, or express their will, they cannot give their consent to anything. Those, however, who have been able to hear or speak, but have lost the power by accident, sickness or other cause, he places in a very different position. In their case, he says, it is to be ascertained who or what they were before the misfortune came upon them; because if they could speak and hear, and give consent at the beginning, they retain all the acquisitions (property) they may have acquired, and may continue to acquire through their guardians, to be appointed; but should not be allowed, without great care and caution, to grant or transfer to another what they possess. And he then declares, that an inquiry must be instituted by the court, for the purpose of ascertaining and determining

what shall be necessary for maintaining such persons, according to their quality and the quantity of their estate.

We will give the principal passage upon the subject from Bracton in his own words, which will be the more interesting, as it shows that the law did not at that time admit, or rather it denied, the possibility of the Deaf and Dumb expressing their will or consent, even by signs; a state of things not remarkable, when it is remembered that the learned Spaniard Vives, nearly two centuries later, questioned, merely from the inherent incredibility of the thing in his view, the statement of the Heidelberg Professor Agricola, that he had seen a young man, born Deaf and Dumb, who had learned to understand writing, and to note down his whole thought. (De Anima of Vives, lib. ii, cap. De Discendi Ratione, and see De Inventionem Dialecticæ of Agricola, lib. iii.) The passage from Bracton is as follows:

"Competet autem tenenti exceptio peremptoria ex persona petentis, propter defectum naturæ; ut si quis fuerit surdus et mutus naturaliter, si quis omnino loqui non possit nec audire, non tamen si tarde audiat, vel loqui fuerit aliquantulum impeditus. Et talis cum naturaliter surdus fuerit et mutus, acquirere non potest omnino, et cum omnino audire non possit nec omnino loqui, voluntate et consensum exprimere non potest, nec verbis, nec signis. Naturaliter dico, hoc est a nativitate, sicut dicitur de cæco, qui cæcus fuit a nativitate, quia si hoc aliter alicui eveniret a casu, inquirendum erit qualis fuerit ante hujusmodi infortunium, quia si loqui potuit ab initio, et audire et consentire, per se et per procuratorem acquireret, et acquisita retinet, sed tamen de facili non transfert ad alium acquisita sed cum surdus et mutus naturaliter acquirere non possit, per officium judicis invenienda sunt ei necessaria quoad vixerit, pro qualitate personæ, et hæreditatis quantitate, si hæres esse debuit, et si semel auctoritate curatoris acquisieret, si fuerit inde ejectus recuperabit per assisam, sicut minor."

Bracton had carefully studied the Code of Justinian, and it is a striking proof of his intelligence and observation in that early age, that he adopts but two of the classifications of the Roman lawyers, viz: those with whom this infirmity is from birth, and those with whom it is *not* from birth, but the effects of an accident supervened in the course of life. He does not repeat the absurdity of the Roman Code—of the possibility of the faculty

of speech in those who continue deaf from birth; nor class as disqualified persons those who are merely deaf, or those who are only dumb—an omission not accidental; for a great part of Bracton's work is a mere transcript of Justinian, word for word. His rejection, therefore, of the three last classifications of the Roman lawgiver, was evidently deliberate and designed. He speaks invariably of those who are both Deaf and Dumb, and is careful to point out that a person is not to be included in that class, because he has a difficulty in hearing, or an impediment in his speech.

In the next reign, that of Edward I., appeared the work denominated *Fleta*, which was a mere appendage to Bracton. The writer of this treatise, who is unknown, for it takes its name from a fact stated in the preface, that it was composed in the Fleet prison, puts the Deaf and Dumb from birth in one general classification with natural fools, the mad, and those who are afflicted with general leprosy; and refers to them as an entire or whole class, who, from their natural defect, cannot acquire nor alienate, because they cannot give a legal consent; but who, from their inability to manage their own affairs, may have guardians appointed over them, and may acquire property by their guardian; but the guardian, it seems, had no power to alienate the estate or property of such wards. "*Competit etiam exceptio tenenti propter defectum naturæ petentis, vel si naturaliter a nativitate surdus fuerit, aut mutus, tales enim adquirere non poterunt nec alienare, quia non consentire, quod non est de tarde mutis vel surdis, quibus dandi sunt curatores et tutores cum ex casu talis ægritudinis de rebus propriis disponere nesciverunt, et tales per procuratores adquirere poterunt, sed non legitime alienare.*" (*Fleta*, lib. vi, cap. 40, § 2.)

As the feudal law stood in the time of Bracton and *Fleta*, the custody of idiots, under which were included the Deaf and Dumb from birth, or those who became deaf and dumb in the course of life, was given to their feudal lords; that is, where they had landed property, the guardianship of their person and the possession of the estate was vested in their lord, the title or fee remained in them until their death, and passed at their death to the next heir in the order of succession; but during their lifetime the possession of their estate, as well as of all lands or hereditaments which might come to them during their lives

by purchase or descent, was vested in the lord of the fee as their legal guardian. In consideration of the enjoyment of their estate, he was obliged to support them according to their quality and the quantity of their property; but beyond what was necessary to maintain them, which was ascertained by a judicial inquisition, the rents and profits of their estate during their lifetime went to and were enjoyed by him as his exclusive perquisite or right. (Fleta, lib. i, c. 11, § 10; Dyer, 302; Huit, 17; Noy, 27.)

Apart from the injustice of giving to the feudal proprietor or lord paramount all the benefits and profits of the estates of those who were disabled from taking charge of them, except what was necessary for the support of his ward, this regulation led to a serious train of abuses. It held out to those grasping and unscrupulous proprietors the temptation to possess themselves of estates upon the presumed want of capacity in the natural heirs; and though the law required that the want of natural capacity should be determined by a judicial investigation, this precautionary measure proved inadequate to restrain the powerful barons from obtaining the control of estates upon slight and insufficient grounds. Not only was this the case, but the estates were shamefully mismanaged, injured in value, or prodigally wasted; it being an object with these temporary possessors to get out of the estate as much as they could while they had the control. These abuses went on uncorrected, until a monarch came upon the throne who had both the will and the capacity to cope with these feudal tyrants, and restrain them in their course of oppression and injustice. Among the many reforms which distinguished the important reign of Edward I, was the passage of a law abolishing this feudal privilege, and making it a part of the king's prerogative to have the custody of the estates of those who, from want of natural capacity, were incapable of managing them. From a passage in Britton, cap. 16, Beverly's case, 4 Coke, 125, this may have been originally the common law; and the right of possessing themselves of such estates may have been an assumption and encroachment on the part of the barons, like many of the feudal privileges which they claimed, and had the power to enforce in that age of baronial supremacy. But the remarks about it in Fleta, (lib. 6, § 10,) indicate that this statute was



an organic change in the law, and not merely declaratory of it. That it was administered with uprightness and vigor, is to be assumed from the manner in which the laws were maintained and enforced during the reign of this powerful, vigilant and energetic monarch. Whether it had fallen into disuse during this turbulent reign of his feeble successor, or whether its provisions were not regarded as sufficiently explicit, we are unable to say, as the statute is now lost; but in the reign of Edward III, a new law was passed, declaring that the king should have the custody of the lands of natural fools, taking the profit of them without waste or destruction, and should find them in necessities; and that after the death of such idiot, he should render the lands to the right heirs, and that they should not alien their lands, nor should their heirs be disinherited. (17 Edw. III, stat. i, c. 8.) Lord Coke, in interpreting this statute, declared that it applied only in the case of idiots *a nativitate*, (Beverly's case, 4 Coke, 127.) It has been shown by the quotation from Fleta, that the Deaf and Dumb from birth were regarded by the law as idiots; and had the law continued so to regard them, without qualification or exception, it would have been productive of endless absurdities, and led in many instances to the grossest injustice. But it is one of the chief excellencies of the common law, that unlike the Roman civil law, it is not a positive code of definitions, but adapts itself to the progress of knowledge, rejecting any absurdity that has grown out of the ignorance of the past, and recognizing as its principle and practice whatever becomes apparent in a more enlightened condition of society.

How loosely the common law, or the expounders of it, defined, even two centuries later, what was understood in law as an *idiot*, will appear from Fitzherbert's *Natura Brevium*, written in the reign of Henry VIII. An idiot, says this writer is one that "cannot number twenty pence, or tell who was his father or mother, or how old he is, &c., so that it may appear that he hath no understanding or reason what shall be for his profit or his loss. But if he have such understanding that he knows and understands his letters, and can read by teaching or information of another man, then it seemeth he is not a sot nor a natural idiot." (F.—N. B. 233, B.) A definition which Lord Tenterden characterized as absurd, or repugnant to com-



mon sense; "for," said that eminent judge, "as to repeating the letters of the alphabet, or reading what is set before him, a child of three years may do that." (1 Dow. P. C. New Series, 392; S. C. 3 Bligh, New Series.) Even under Fitzherbert's definition, an educated Mute, in that age, would not have been an idiot. But such definitions were of no practical consequence, for it was wisely ordained by the common law that the question whether or not a man was to be adjudged an idiot, was a question of fact, to be determined by a jury, not according to legal definitions, but as they found the fact to be upon the testimony laid before them; and no man could be deprived of his property or of the common rights and privileges of a subject upon that ground, unless upon "*offices found*," as the old legal phrase is. (Dyer, 25; Moor, 4, pl. 11; Bacon's Abs. 5; Idiot, B.; Skin. 5, 178.)

That the Deaf and Dumb from birth were deemed incapable of giving their consent to any act, and that acts done by them while under this infirmity, such as granting or conveying any interest in their real estate were void, was up to this period the recognized rule of law, has been shown by the writers referred to. But in the very reign in which Fitzherbert wrote, the law upon this point seems to have been questioned. In the thirty-sixth year of Henry VIII, a case occurred in which a son sought to avoid a conveyance of land made by his father, upon the ground that his father, in the language of the report, (*Young v. Sant*, Dyer, 56, a.) was "from the time of his birth until the day of his death, deaf and dumb, and being so deaf and dumb, made a charter of feoffment of the land, which charter he sealed and delivered upon the land, to the defendant. The son accordingly brought an action of trespass against the defendant for entering upon the land; and the defendant *demurred*; that is, denied that the son had any ground of action against him, or had any right to the property. What decision was come to by the court upon the interposition of this demurrer,—whether they held that the defendant had acquired a lawful right to the land under the instrument which the Deaf and Dumb owner of it had sealed and delivered to the defendant,—or whether the son was entitled to the property by reason of his father's incapacity to make such a deed of conveyance, does not appear from the report; but the case is referred to,

to show that the law was not at that time taken for granted, but was at least doubtful or unsettled. This state of uncertainty seems to have existed during the reigns of Elizabeth and James I; for Lord Coke admits that it was the opinion of some, that this class of persons might express their *consent by signs*. "One," he says, that is deaf and wholly deprived of his hearing cannot give, and so one that is dumb and cannot speak. Yet (according to the opinion of some,) they may consent by signs; but it is generally held that he that is dumb cannot make a gift, because he cannot consent to it. (1 Just. 107.)

In the reign of Charles II, however, a case arose in which the question came directly before the court for decision; whether a person born dumb and deaf could transfer an interest in lands, and give a valid consent to the transfer by signs. We will give the case as it appears in Carter's Reports, (Martha Elyot's case, p. 53.) The Chief Justice, Bridgman, reported that a woman came before him to levy a fine, (one of the modes of transferring estates of freehold by the common law,) and he gave to the court the following statement: She and her three sisters have a house and land. An uncle hath maintained and taken great care of her, and he is to buy the house and land of them, and he agrees to maintain her, if she will pass her lands for security. As of her intelligence, the sisters say she knows and understands the meaning of all this. I demanded what sign she would make for passing away her lands, and as it was interpreted to me, she put her hands that way, where the lands lay, and spread out her hands. It being a business of the court, and for her own good I thought fit to communicate it to you. He then referred to the case of one Hill, who was born deaf and dumb, and was brought before Justice Warburton to levy a fine, but the judge would do nothing until he had acquainted his brethren. Hill was examined, and being found intelligent, Judge W. took the fine. Upon this report being made to the court by C. J. Bridgman, Archer, one of the Justices, said the rule of law is that in fines and feoffments, (the usual mode at that time, of conveying an interest in land,) if there is good intelligence, they (Mutes) may do such acts. They may be admitted to make contracts for their good. They are admitted, upon examination, to marry and receive the sacraments. They may make contracts for their persons, why not for their estates? I conceive that it may be

done, and that your lordship may take the fine. The other two judges, Tirrel and Brown, agreed, and the fine was accordingly taken.

When this case occurred, the successful efforts that had been made during the century preceding, in different parts of Europe to instruct the Deaf and Dumb and improve their condition, had been brought before the English public. Half a century had elapsed since Sir Kenelm Digby, and the other companions of Charles I, in his romantic journey into Spain, had brought back reports of the marvelous success of Ponce and Bonet in teaching Deaf-Mute nobles of the great house of Velasco. At the time of this decision, Drs. Bulwer and Wallis, the latter a practical teacher, and a man eminent in almost all kinds of learning, were then living. Wallis had exhibited his pupil, Daniel Whalley, before the Royal Society more than ten years previously. Whalley, indeed, was not deaf from birth, but others of Dr. Wallis's pupils were. Dr. Bulwer's "*Philocophus, or the Deaf and Dumb Man's Friend*," had been published more than twenty years. Holder had also published his "*Elements of Speech*, with an Appendix concerning persons Deaf and Dumb," in which he gave an account of the method he employed, as early as 1659, in the education of a Deaf and Dumb person. And shortly before the decision now in question, that is in 1670, a letter of Wallis, detailing his methods of instruction, had appeared in the *Philosophical Transactions*, and in the same year George Sibscota published his little work entitled the "*Deaf and Dumb Man's Discourse*." Light was breaking at several distinct points out of the night of darkness that had so long involved the Deaf and Dumb. To these works, as well as to the personal efforts of those English philanthropists, the credit is no doubt due for a more enlightened view on the part of the court of the legal rights and responsibilities of this class of persons.

In this connection we will refer to a subsequent case which appears to be the earliest English adjudication upon the right of those born deaf and dumb to have the possession, enjoyment and management of their real and personal property, where it appears to the court that they have the requisite intelligence.

In 1754, a woman born deaf and dumb, upon arriving at the age of 21 years, applied to the Court of Chancery for the possession of her real estate, and for the enjoyment of her personal

estate, (it is presumed that she had been previously under the control of a guardian.) Upon her appearing before the Chancellor, Lord Hardwicke, he put questions to her in writing, and receiving suitable answers to them in writing, he ordered her application to be granted. (*Dickinson v. Blisset*, 1 Dickens, 168.)

After the passage of the statute of Edward III, referred to on a previous page, it became usual for the king to grant the custody of the estates of idiots to some person, who thereby became entitled to the same privileges and powers which the king enjoyed under the statute, that is, the possession of the estate, and the enjoyment of the rents and profits upon the condition of supporting the idiot. These grants, which were made for a *bonus* or consideration, became and continued for centuries to be one of the sources of the royal revenue; and the power thus conferred upon these grantees or guardians, came in time to operate injuriously upon such estates, as the guardianship of the feudal barons had formerly done. (4 Inst. 203.) So great was the hardship upon private families, that in the reign of James I, it was proposed to vest the custody in the relatives of the party, and settle an equivalent upon the crown in place of it. But an abuse which yielded so much revenue to the crown was not easy of removal, and it remained uncorrected till the breaking out of the revolution of 1640, since which time the crown has always granted the surplus profits of an idiot's estate to some of his family. (1 Ridley P. C. 519.) From the time of Henry VIII, the administration of such estates was vested in a Court of Wards. This court was abolished in the reign of Charles II, and its authority over such matters then vested in the Court of Chancery. And the right of directing the control and administration of such estates has, in England, remained in the Court of Chancery until the present time. Whether or not a man is an idiot, incapable of managing his affairs, is ascertained by a writ, *de idiotâ inquirendo*, which must be tried by a jury of twelve men. To prevent abuse, the finding may be reviewed in the Court of Chancery, and the alleged idiot brought before the Chancellor for inspection, who if he is not satisfied that the finding is correct, may discharge the whole proceeding. If he is satisfied of its correctness, he appoints a person to take charge and manage the estate, who acts always under the supervision and control of the Chancellor.

In this country this power is most usually vested in the courts of equity, and though there are different regulations in different States, the general mode of proceeding is essentially the same as in England.

The result of this examination of English common law, as the foundation of American law, is, that the Deaf and Dumb have ever possessed the same rights of inheritance as those who are not deaf and dumb: and, like the latter, are restricted in the full enjoyment of such rights only upon proof of the want of the requisite intelligence. This, also, we believe, is the case throughout Europe; the old feudal codes having mostly passed away. As to what would be deemed satisfactory proof of the requisite intelligence, there is evidently room for much diversity of opinion; and different decisions may be given in similar cases, according to the degree of intelligence and freedom from prejudice of the judge or jury. In such cases, indeed, the intelligence of the judge has often more to do with the decision than the intelligence of the Deaf Mute.

We will next consider whether a Deaf Mute can make a valid will. Evidently, a person deprived of the control of his property during his lifetime, cannot consistently be permitted to alienate it from the legal heirs at his death. The Roman law on this point we have already cited. The English law would decide this question according to the actual intelligence manifested. Other European codes, more influenced by the spirit of the Roman law, exact formalities which only Deaf Mutes able to write can comply with. In France, a Deaf Mute able to read and write, is admitted on all hands to be competent to make a valid will, writing, signing and dating it with his own hand, conforming in this to the spirit of the Roman law, and avoiding the ignorant exclusion of Deaf Mutes from birth from the possibility of education. It is required, however, that "the judges should have positive proofs that the Deaf Mute testator had exact notions of the nature and effects of a testament; that reading was in him not merely an operation of the eyes, but also an operation of the understanding, giving a sense to the written characters, and acquiring by them knowledge of the ideas of another; that writing was the manifestation of his own thoughts; that, on the whole, the testamentary dispositions were such as showed the

effect of an intelligent will—and these proofs are at the charge of the person to whose benefit the will is made.”\*

From this statement, taken from a standard French work, it appears that, whereas in ordinary cases, every person of lawful age is considered competent to make a will till the contrary is proved, a Deaf Mute, on the other hand, is considered incompetent till his competency is proved.

Piroux records a case in which the holograph will of a Deaf Mute, Theresa Charlotte Lange, was, in August, 1838, annulled by the Tribunal of Saint Jean d'Angely, on the ground that, though it was not contested that the will was written by the own hand of the testatrix, yet there was no evidence that she could use writing to express her own ideas, but, on the contrary, evidence that she could only express herself by signs. As this case was an important one, and seems to have been argued at much length, and carefully considered by the court, we will give an abstract of the points in which the judgment was founded:†

“The heirs have not denied that the characters which compose the material body of the document purporting to be the testament of Theresa Charlotte Lange were the work of her hand, but maintained that they could not be the work of her intelligence; hence that there was no occasion for a verification of the hand-writing, or for enquiring at whose charge such verification should be.

“No provision of law places the Deaf Mute in any exceptional case as to the capacity of making a will; he possesses the common rights of other men; and therefore can, like the generality of citizens, bequeath or give away property, provided he complies with the formalities exacted by law.

“If, in consequence of his infirmity, he cannot make a will by *acte publique*,‡ he cannot, at least, when he knows how to write,

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\*Piroux' Journal, *L'ami des Sourds-Muets*, tome 1, p. 5, taken from *Le Dictionnaire de Legislation usuelle*, published in 1835 by M. Chabrol Chaméane.

†Piroux' Journal, tome i, p. 109-112. We have, in making the translation here given, omitted the legal *attendu que*, which in the original begins each paragraph.

‡Dictating the provisions of a will publicly, in the presence of witnesses, to a notary public, who, after writing it down from this dictation, reads it to the testator, and attests his signature and acknowledgment. The French Code re-

when he can manifest his will in an unequivocal manner, contest his ability to make a holographic or a *mystique* testament; this is a point on which there is now no difficulty.

"To be valid, the holographic testament must be written, dated and signed by the hand of the testator.

"In ordinary language, and in the strict acceptation of the term, it is true that to write may be understood to trace on paper letters or characters, no regard being had to their signification.

"But in the eyes of the law, and in its more extended acceptation, this expression has a very different sense; and it is evident that in a matter of such importance as making a will, to *write* most evidently cannot be understood of the purely mechanical act which consists in copying, instinctively or by imitation, characters that have been placed before one's eyes, and of which the copier does not know the use or meaning; that to know how to write is to be able at once to conceive, collect, arrange one's thoughts, put them in form and express them on paper by means of certain conventional characters; and consequently, it is much more an operation of the mind, a work of the intelligence, than a labor of the hand.

"Whence it follows, that to know how to *write* in the true acceptation of the word, it is indispensable to know the significations of words, to comprehend the relations which they have, the objects and ideas which they represent; that thus to establish that an individual knows or knew how to write, it is not enough to produce a sample of characters placed one after another; this would only prove that he had been habituated to figure letters, or to draw; but it is necessary to prove that he has received, whether in a public institution or by the care of capable persons, the education necessary to attain this result; this is above all true when the question is of a Deaf Mute from birth, who, deprived of two organs, so essential as hearing and speech, whatever natural genius and capacity he might have

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quires that the testator should dictate the provisions of the will *viva voce*, and should *hear* it read; expressions which, if taken literally, would preclude all Deaf and Dumb, or even merely Deaf persons, from this mode of making a will, a mode evidently designed to assure certainty in drawing up the wills of illiterate persons. Some respectable lawyers, however, argue that the *spirit* of the law would be complied with by dictating and reading in signs.



otherwise, has so many difficulties to overcome in order to develop, or rather to form, to re-temper his intelligence.

"When such a proof becomes necessary, it is without doubt incumbent on the party who would have the benefit of a writing attributed to a Deaf Mute; in this matter the general rule is, the state in which nature has placed the individual afflicted with dumbness and deafness; the exception is, the modification or amelioration wrought in that state: the presumption of law is, that the Deaf Mute is illiterate, and the fact to be proved, that he has been brought out of his ignorance by education—which is consequently to be proved by him who alleges this fact, or claims the exception.

"Therese Charlotte Lange was born deaf and dumb. Nothing offered in evidence shows her to have been, whether in youth or at a more advanced age, placed in an establishment consecrated to the special education of those unfortunate persons afflicted like her with this double and deplorable infirmity. It is alleged, indeed, that on her arrival in France, she was, as well as her sister Rose, also deaf and dumb from birth, received by the Abbé Hardy, then vicar-general of the bishoprick of Saintes, and that this ecclesiastic, devoting himself wholly to the care of their education, had taught them to read and to write; but no proof of this fact is to be found in the documents produced in the case: the only piece which has been adduced in support of these allegations, the *acte* of 19th September, 1789, far from justifying them, seems to prove the contrary.

"In effect it results from this *acte*, that one of the ancestors of the plaintiffs had wished at that time to withdraw the demoiselles Rose and Charlotte Lange from under the guardianship of the Vicar Hardy, in order that they should, as he said, re-enter the bosom of their family; and it was only by gestures and signs that Therese Charlotte, particularly, manifested her opposition, and her refusal to adhere to the demand of the Sieur D. F. Desportes. Four witnesses, whose communications with the demoiselles Lange were frequent, were on this occasion called in to assist at this declaration in mimic language, and to interpret the signs by which they made known their resolutions; all these circumstances are such as to give a strong suspicion, in spite of the physical fact (*fait matériel*) of the apposition of the signature of Charlotte Lange at the bottom of the protestation, which



was written, as is mentioned in the *acte* itself, by Rose Lange—that signs were the only means she knew to manifest her will or wishes.

“From this epoch to that of her marriage in 1821, nothing is shown which could tend to invalidate this conclusion. If it is alleged that she had a great facility to divine the signs addressed to her, and to make herself understood by means of gestures by those with whom she was habituated to communicate, that fact may prove that by a just compensation, nature had endowed her with a remarkable instinct and penetration, but not destroy the presumptions, weighty, precise and consistent, which result from the other circumstances of the case; because these presumptions are yet farther justified by the fact that she appears to have made no use of writing, which ought, however, to have been one of the easiest and surest means of communication with her relatives and friends.

“These presumptions, already so strong, become certain proofs when, in the most solemn circumstance of her life, at the epoch of her marriage with the *Sieur Hardy* in 1821, we see *Therese Charlotte*, in order to accomplish this marriage, forced on one part to have recourse to the *Garde des Sceaux* (Keeper of the Seals,) to obtain an authorization to this effect, because of the impossibility in which she found herself to express her consent; and on the other side, obliged to employ an interpreter to transmit to the public officer the consent which she gave as is mentioned in the *acte civile*, (the civil part of the contract of marriage) *by signs*, showing her intelligence by conversation on all sorts of subjects, when it had been so easy for her to avoid all these difficulties by giving her consent in writing, if in fact she knew how to write.

“Hence there can be no doubt that at the epoch of her marriage with the *Sieur Hardy*, *Charlotte Lange*, then aged sixty-five years, did not know how to write, and it is difficult to admit that she could have learned since; moreover no proof has been offered on that point.”

“It must be concluded, from all these facts, that evidently, if the *acte* called her testament, materially emanated from her, it is not the work of her intelligence, and that, in this point of view, it cannot be valid in the eye of the law.”

The testament dated 7th August, 1834, and enregistered 8th

August, 1836, was accordingly declared null. The plaintiffs, M. M. Desportes, having offered a *liberality* of 12,000 francs to the defendant and legatee Hardy, the latter acquiesced in the judgment; a fact that induces a suspicion that the decision of the court was not considered altogether conclusive, and that there was some possibility of a different ruling by a higher tribunal; or at least doubt enough to encourage the defendant to prosecute an appeal, if not bought off.

The reader will observe that, in this case, the general intelligence of Therese Charlotte Lange, and her competency to make her wishes distinctly known by signs, were not called in question. The only question was whether she could read and write with sufficient understanding to write her own will, with a full knowledge of its provisions and their effect. In this point of view, we are not prepared to dispute that the decision of the court was correct. It is probable, from the facts shown in the case, that though Therese Charlotte might have had some idea of the meaning of simple sentences, those about her and possessing her confidence, might have placed almost any instrument before her to copy as her own; she would have had to rely on their interpretation in signs for its purport.\*

We have, however, to object to the reasoning of the judgment before us on one or two points. It is by no means true that a Deaf Mute who has been taught to read and write, however expert he may be, finds writing "the easiest and surest means of communication with his relatives and friends." In most cases, on the contrary, the relatives and friends of an educated Deaf Mute find it much easier to learn to communicate with him by signs, than to suffer the tediousness and other inconveniences of having to write every communication. And there are few Deaf Mutes from birth, however well educated, who do not understand signs skilfully made, more easily and readily than writing.

We may further remark that a Deaf Mute who uses written language so imperfectly that he prefers to express himself by

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\* It is, however, to be observed that illiterate people generally have but a confused idea of the meaning and force of legal phraseology, and are about as much dependant as a half-educated Deaf Mute on the integrity of their men of business.

signs, may yet have a fair idea of the meaning of what he reads or copies. Whether this last was the case with Charlotte Lange, the evidence before us does not show.

Under this decision, and others of the same tenor, it seems that, in France, an uneducated or imperfectly educated Deaf Mute cannot make a valid will at all. As it is certain that there are some uneducated, and many partially educated, Deaf Mutes who are perfectly competent to manage their own affairs, and as fully aware of the nature and effects of a testament as illiterate speaking persons generally are, it must be considered as a defect of the law, if they are, by consequence of the formalities exacted, precluded from disposing by will of property perhaps acquired by their own industry. The reason given by Pothier, that "signs are too equivocal to authorize the declaring one's last will in this mode," is, as the distinguished Deaf-Mute Professor Berthier well observes, very contrary to the fact, so far at least as concerns the signs used by Deaf Mutes of fair intelligence, who have been accustomed to communicate freely, like Charlotte Lange, with those around them. Berthier has, with equal zeal and ability, repeatedly brought this and other points on which he conceives injustice has been done to his unfortunate brethren, to the notice of the French Legislature. If he has failed to obtain a modification of the code in their favor, it seems to have been not so much from any want of appreciation of the justice of his complaints, as because more liberal principles of interpretation were beginning to prevail in the French courts, by which the necessity of special legislation is probably superseded.

The evidence of this change of views among French jurisconsults is found in a case recorded in Morels' "*Annales des Sourds-Muets et des Avengles*," tome i. (1844,) pp. 164-179: "The *Sieur Clergue*, Deaf Mute, not knowing how either to read or write, appeared (in 1835) before M. Dubosq, notary, *assisted* by his mother and his niece, and in presence of several witnesses, who, by their relations with the Deaf Mute, were able to understand his signs. He declared in a language understood by all present, that he gave the ownership of all his property to the *Sieur Pierre Clergue*, his nephew, on condition that the latter should provide for all his necessities during his life. The *acte* drawn up by the notary was read to those present, and explained in mimic lan-

guage to the *Sieur Clergue*, who manifested, by very intelligible signs, that the notary had faithfully expressed his mind."

"After the death of the *Sieur Clergue*, in 1839, his heirs attacked the donation, as emanating from an incapable person. They founded their case principally on this, that a Deaf Mute, who does not know how to read and write, not being permitted, by the terms of the French Civil Code, (article 936,) to accept a donation without the assistance of a *curateur*,\* should have, *a fortiori*, need of this assistance to express his own consent to a donation of his property." To which it was replied, that it was easier to know what one gives, than to understand what one binds one's-self to in accepting a donation; that the rule of the code was not designed as a rule of capacity, but for the advantage of the Deaf and Dumb, enabling all to accept donations, and leaving those who possessed sufficient intelligence to make them.

The case was carried from court to court, till it reached the court of the last resort, the *Cour de Cassation*; and by each tribunal before which it was taken, the donation was sustained. The grounds of this decision were mainly these:

"In general, every person can make a contract, unless expressly incapacitated by law; incapacities should be strictly construed, and were not to be extended beyond the letter of the law." The authors of the civil code (following, according to their published debates, the expressed opinion of the First Consul himself on that point,) had expressly refused to deny the faculty of contracting marriage to Deaf Mutes, even if illiterate, leaving the tribunals to judge from their signs, whether they possessed the degree of intelligence necessary to a valid consent, and had expressed such a consent; and this faculty of contracting marriage involves the very principle in question in this case, that of making a donation *inter vivos*, (a gift of one's property in one's lifetime.) Since the success that has attended the efforts to educate them, Deaf Mutes can no longer be considered, as they are by the Roman Code, as being generally wanting in the intelligence necessary for managing their own affairs; the facts and circumstances proved that the Deaf Mute *Clergue* had the

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\* The acceptance of a formal donation, on account of the onerous conditions sometimes annexed, requires caution and intelligence in the donee.

capacity necessary for making a contract, and that he could put himself in communication with the notary and the *assistants*, (those present,) in such a manner as to leave no doubt of his intentions or of his will.

It is evident, that if a Deaf Mute has the capacity to make a valid donation of his property in his lifetime, by an instrument drawn up from his signs, and acknowledged by him by means of signs, he must be equally capable of making a will in some similar mode. Granting him the former capacity, it must be absurd to refuse him the latter. The difficulties are merely matters of form, which will doubtless be got over, when the principle is once admitted.

In English and American laws, the distinctions of the French law between the different sorts of wills (the *testament olograph*, the *testament par acte publique*, &c.) do not exist. The circumstance of a will being written wholly by the testator's own hand, does not make it valid, if the required forms of attestation before the legal number of witnesses were not complied with. The Surrogate of New York observes: "No particular form is requisite; all that the law requires is, that the testator shall communicate to the witnesses that it is his will, and that he desires them to attest it. This can be done by reading and other acts performed by a third person, provided an intelligent assent on the part of the testator be shown. Indeed, not a word need of necessity be said. *A Deaf Mute might go through all the ceremony by means of a written communication.*"\* Of course, this refers only to the case of a Deaf Mute able to read and write.

We have not been fortunate enough to find any English or American case in which the validity of a will, made by a Deaf Mute, came in direct question; but opinions bearing upon the point before us, have been incidentally put forth by the very eminent jurist, Surrogate Bradford, of New York, whom we have just cited. He declared, (in *Wier v. Fitzgerald*, 2 Bradford's Reports, 42,) that the law does not prohibit a deaf, dumb or blind person from making a will; that the defects of the senses do not incapacitate, if the testator possesses sufficient mind to

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\* Bradford's Reports, 265.

perform a valid testamentary act; and after reviewing the provisions in the Code of Justinian, and the rule as stated by Blackstone,\* that those born deaf, dumb and blind are incapable of having *animus testandi*; and that their testaments are void, as they have always wanted the common inlet of understanding; he says that this rule was necessarily qualified by the reason of it, which was a *presumed* want of capacity; and, of course, in any case where it appears as matter-of-fact that there was sufficient capacity, the reason of the rule no longer applies.

We have, however, a direct adjudication upon the kindred question, whether an uneducated Deaf Mute can make a valid deed or conveyance of real estate. In *Brower v. Fisher*, (4 Johnson's New York Chancery Reports, 441,) a deed was declared valid that had been made by an uneducated Deaf Mute; it being shown on enquiry, by a commission of lunacy, that the grantor, though born deaf and dumb, "had sufficient intelligence for the management of himself and property, and was capable of communicating, by signs and motions, with persons with whom he was intimate, so as to be well understood and of understanding them; that the jurors were of opinion that the defendant was not a lunatic, unless the fact of his having been born deaf and dumb, in judgment of law made him a lunatic." The Deaf Mute had sold his interest in his father's estate to the plaintiff for \$375, which was proved to be a fair compensation under the circumstances, being assisted in making the sale by his mother and an intimate friend; and subsequently bringing suit on the bond then given, the purchaser was advised that the deed from a Deaf Mute was not valid, and appealed to the Court of Chancery for his own protection. Chancellor Kent decided that the deed was valid under the circumstances; yet that "the bill does not appear to have been filed vexatiously, but rather to obtain, for greater caution, the opinion of the court on a point which had been left quite doubtful in many of the books, and which had never received any discussion here." The Chancellor observes: "Upon the finding of the jury under the commission, in nature of a writ *de lunatico inquirendo*, I refused to appoint a committee, and adjudged that the defendant was not to be

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\* 2 Blackstone's Commentaries, 497.

deemed an idiot from the mere circumstance of being born deaf and dumb. This is a clear, settled rule, and numerous instances have occurred in which such afflicted persons have demonstrably shown that they were intelligent, and capable of intellectual and moral cultivation." This is quite a safe assertion, even in this country, in 1820, the date of this case. After citing conflicting cases and authorities, for which we refer our readers to the volume of reports, the learned and able Chancellor goes on to say: "Perhaps, after all, the presumption in the first instance is, that every such person is incompetent. It is a reasonable presumption, in order to ensure protection and prevent fraud, and is founded on the notorious fact, that the want of hearing and speech exceedingly cramps the powers and limits the range of the mind. The failure of the organs necessary for general intercourse and communion with mankind, oppresses the understanding: *affigat humo divinæ particulam auræ*. A special examination, to repel the inference of mental imbecility, seems always to have been required, and this presumption was all that was intended by the civil law, according to the construction of the ecclesiastical courts; for a person born deaf and dumb was allowed to make a will, if it appeared, upon sufficient proof, that he had the requisite understanding and desire. I am satisfied that the plaintiff is justly to be exempted from the charge of a groundless and vexatious inquiry, and the course is not to punish the prosecutor of a charge of lunacy with costs, if the prosecution has been conducted in good faith, and upon probable grounds. I shall, therefore, dismiss the bill without costs."

The effect of this decision seems to be, that a Deaf Mute from birth is, in all cases, to be presumed incompetent to make a will or a contract, till his competency is proved; and that if he sells property, and the buyer afterwards chuses to question his competency, he must defend himself at his own costs. We submit that it would be more in accordance with reason and justice to presume his competency, as in the case of men who hear and speak, when he has among his neighbors a reputation for intelligence, and ability to manage his own affairs, and more especially, when he has been taught to read and write. It is to be presumed that no man would make a contract with him, unless he had such a reputation for intelligence and competency; and if the purchaser of property from a Deaf Mute neglected to



ascertain this point beforehand, we, with all due respect to the high authority we have cited, respectfully submit that the *laeas* is his own, and that he ought to bear the costs of an inquiry which he ought to have previously made himself. It is observable that Chancellor Kent, in the opinion before us, makes no distinction between Deaf Mutes who have and those who have not been educated. Probably, at that early day, he was hardly aware of the nature of this distinction. Indeed, it is a fact, that there are some uneducated Deaf Mutes more intelligent in matters concerning their own affairs, than are *some* of those who have spent years in an Institution; for all the care of the teacher cannot remedy the original want of capacity. Such cases are however rare. The fact of having been educated is one strong presumption of capacity of a Deaf Mute to manage his own affairs; and if not educated, still his reputation for intelligence among his neighbors ought, as we have already observed, to be presumptive proof as to his capacity or incapacity.

The capacity of making a contract involves the capacity of making a will; as we see, in the citation just given from Chancellor Kent, he refers to the testamentary capacity conceded to Deaf Mutes by "the ecclesiastical courts," where they were proved to have "the requisite understanding and desire," in illustration of the capacity of a Deaf Mute to execute a valid deed. From this decision, therefore, and from the opinion expressed by Surrogate Bradford, before referred to, we are warranted in declaring the law to be, that an intelligent Deaf Mute, even if unable to write, and only able to make his wishes known by signs, can make a valid will, or valid deed, or bind himself to any other obligation or contract. And we have high legal authority for adding, that whatever may be the degree of his intelligence, he is bound for, and an action can be maintained against him for necessities suitable to his condition, unless it appear that the person who supplied them knew of his want of ordinary intelligence, and imposed upon him. (*Baxter v. Earl of Portsmouth*, 7 D. & D. Ky. 614; 5 Barn. & Cres. 170; 2 Car. Pay. 178.)

In the same volume (4th) of Johnson's Chancery Reports, (p. 168,) we find a case in which a woman "unmarried, of the age of sixty years, deaf and dumb from infancy, and of such imbecility of mind as to be incapable of defending the suit" in



which she was legally a party with her brother and others, was admitted to appear and defend by guardian. No special inquiry was here made; the facts on which the application for the appointment of a guardian were founded being merely verified by affidavit. Here, it will be seen the appointment of a guardian was grounded on "imbecility of mind," and not merely on the defendant's being deaf and dumb. She was doubtless uneducated; for, at that date, (1819,) there were no Deaf Mutes in the State of New York, sixty years of age, who had had the opportunity of receiving an education. Had she been educated, however, there can be no question that extreme "imbecility of mind," though it would be less likely to supervene, would, if present, be a cause for appointing a guardian.\* We find a French case in point, recorded by Piroux, who informs us that he was called in, as an *expert*, to give advice on the question, whether Frances Boury, one of his former pupils, (at Nancy, in Eastern France,) was in a condition to manage her own estate, or whether it would be for her benefit to name for her a *conseil judiciaire*, (a sort of half-guardian.) "Knowing (he says) that this young woman has no longer father or mother; that she is obliged to live with illiterate persons, among whom her instruction cannot be continued, and, finally, that a sickness of nearly a year, which she had when in our establishment, has hindered her progress, we considered that it would be useful for her to name for her a *conseil judiciaire*, and the tribunal has, by a judgment, confirmed our opinion."†

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\* Since writing this paper, we have examined the laws of Georgia, in which it is enacted, that "Deaf and Dumb persons shall be so far considered idiots in law as to authorize the inferior court to appoint guardians," etc.: provided, it shall be made satisfactorily to appear to said court that such Deaf and Dumb person or persons are incapable of managing his or her estate, or him or her or themselves." This is the only American legislative provision on this point that has come to our notice. Possibly similar provisions may exist in the laws of other States; but we believe not in those of the North-Eastern or Middle States. By the principles and practice of the common law, courts might, without special enactment, appoint guardians for any person satisfactorily shown to be incapable of managing his estate, whether deaf and dumb or not. (See 2 Johnson's New York Chancery Reports, 235.) It seems then the indignation expressed by a Georgia Deaf Mute at the law just cited (*Am. Annals*, viii, 124,) was rather unnecessary.

† *L'Ami des Sourds-Muets*, tome v, p. 9: We suppose that a *conseil judiciaire* differs from a *curateur* or guardian, in that the latter acts according to his own

Another case is recorded, in which "three Deaf-Mute brothers of Normandy, who could count money, play cards, &c., were *interdicted* (that is, declared incapable of contracting, etc.) by the Civil Tribunal of Loziere. One of them, endowed with a rare intelligence, finding the decision of the Tribunal an obstacle to his marriage, appealed to the *Cour Royale* of Rouen. This court was of opinion that the provisions of the law relative to *interdiction* should be restricted to the three cases of imbecility, dementia, and insanity provided for in the Code; and that this Deaf Mute not being in either of these three cases, could not, on account of his infirmity alone, be subjected to a measure so rigorous as the interdiction."\* From these cases we learn, that though through the influence of the Roman and other ancient codes, there is a tendency among lawyers and judges to question the capacity of Deaf Mutes to manage their own affairs, merely on account of their infirmity, yet the better opinion, both under the French laws and our own is, that they are to be treated according to the actual intelligence they evince.

Passing on to another branch of our subject, we will consider the capacity of a Deaf Mute to contract marriage. By the common law, which in this respect differed from the civil (Roman) law, the marriage of an idiot was valid. It seems strangely inconsistent, that the same law which declares this class of persons incapable of giving their consent to anything, still recognized their right to enter into the contract of matrimony. Yet the point, their ability and the validity of such a marriage, appear to have been expressly adjudged. (3 *Coke Lit.* 80 a, note 47.) "If he is able to beget either son or daughter," says one of the early writers on the common law, "he is no fool natural." (*Green, Saver de default.*) But in the last century, this long-received doctrine of the common law was called in question; and after much examination and full deliberation on the part of the courts, it was held that this, the most important contract of life,

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judgment, independently of the wishes of his ward, while the former only gives validity to the acts of his ward by his advice and consent. Would not it be useful to have similar provisions in our laws? There are many cases in which persons cannot be trusted with the independent control of their property, and yet ought not to be wholly deprived of the power of managing it.

† Piroux' Journal, L'ami des Sourds-Muets, tome v, p. 52.

the very essence of which is consent, could not be entered into by one destitute of reason. (1 *Hogg. Cons. R.* 417; 2 *Phill.* 19, 70.)

Of the capacity of a person born deaf and dumb, if *compos mentis*, to contract matrimony, there never appears to have been any doubt under the common law, and the validity of such a marriage contracted by signs, was recognized towards the close of the 17th century. Swinburne, an old writer on the law of marriage, whose work on *Spousals* was published in 1686, after declaring that some held that words were necessary, as touching the church, and some that they were not, says: "Their consent alone is sufficient for matrimony of whose conjunction there is any ado; and it followeth that he or she which cannot speak may contract matrimony. The reason there yielded is this: *Quod verbis non potest, signis valeat declarare*: that which cannot be expressed by words may be declared by signs; seeing their sole consent is sufficient, and seeing that they which be dumb and cannot speak, may lawfully contract matrimony by signs, which marriage is lawful, and availeth not only before God, but before the church; it followeth that words are not so precisely necessary, as without the which matrimony cannot be contracted; and this conclusion is commonly received of all or the most later writers:" and he refers to a large list of various authors and writers. (*Swinburne on Spousals*, 204, c. xv.)

The rule of the civil law, by which Deaf Mutes were considered incapable of contracting matrimony, appears to have been relaxed by the authority of the church; for we find in the twelfth century, a decretal of Pope Innocent III, authorizing such marriages. Whether this was confined merely to the Papal States, or was designed as a fixed regulation of the ecclesiastical or canon law, we are unable to state. It seems, however, not to have been followed or acted on in countries where the canon law prevailed; for in France the validity of such marriages was not recognized until within a comparatively recent period. According to Professor Vaisse, they were recognized for the first time by a decree of the Parliament of Paris, of the 16th of January, 1658. We have already stated the fact, that the authors of the civil code, (the famous Code Napoleon,) rejected the project of a law on this point, leaving it to the tribunals to judge according to the circumstances of each case. In France,

where the Deaf Mute can read and write, there is, of course, no difficulty. Where he is illiterate, different views have been taken by the magistrates before whom Deaf Mutes have presented themselves, attended by their most intimate friends as interpreters, in order to have the civil part of the contract of marriage legally performed. (In France, the reader should bear in mind, the law requires a civil contract of marriage to be entered into before the *maire* of the *commune*; and takes no notice of the religious ceremony, for which the parties usually proceed from the office of the *maire* (mayor) to the church.) Some amusing cases are recorded in Piroux' Journal. In August, 1842, the *maire* of Gensac, a little village of Guyenne, was summoned before the civil tribunal of Castel-Sarrasin, at the instance of Marguerite L., an uneducated Deaf Mute, whose marriage he had refused to celebrate. "Marguerite was a young woman of twenty-five, robust, healthy, affectionate, capable of managing household affairs, intelligent enough to wind up the house clock, and set it to the right hour, and, for a peasant, rich. A young man of the same village sought her in marriage. The girl consented, so her parents attest, as well as the play of her features, and her signs as expressive as tender. But *M. le Maire*, cold interpreter of the law, who acknowledged in the young woman the most praiseworthy qualities, avowing that she kept her cows with care, that she is a good housewife, that she fulfills admirably the duties of a daughter, but who did not find in her the intelligence of the chapter VI of the Civil Code, title of Marriage, on the duties of husbands and wives—refused to see a consent to marriage in those signs which the amorous Thyrasis found so expressive.

Appearing before the tribunal, the President sent out her friends, and attempted to interrogate her, with a loud voice, himself—of course without any result. The best educated Deaf Mute, unless he had acquired a rare faculty of reading on the lips, had been equally unable to understand the President's questions. This proceeding gives no very favorable idea of the sagacity of the judge, or of his appreciation of the peculiar circumstances of a Deaf Mute. Her mother being then called in, the President desired her to ask her daughter whom she wished to marry, and to tell her to seek him in the hall. After some pantomime between the mother and daughter, the latter hastily

passed among the assembled crowd, found her lover, and led him forward by the hand, amidst the encouraging smiles of the spectators. Her advocate maintained that she had sufficiently manifested her wish to marry the *Sieur B.*; but the *procureur de roi* replied:

"The question has been put wrong; we have not to inquire whether the young woman L. attends to her household affairs, whether she cooks well or ill—these facts are not contested; but whether she comprehends the burdens and duties (*charges et devoirs*) of marriage; we have to inquire whether she is capable of giving an intelligent consent. We think not. It is not enough, in order to prove that she comprehends the importance of this solemn act, that she should push from her the *huissier*\*, or that she should lead forward her *pretendant*, (suitor.) Whatever her advocate may have maintained, marriage does not consist in the mere bringing together of the sexes: marriage is rather a moral and civil bond which forms families; families are the nursery of the State. Among us one does not make a gipsy marriage—a marriage by breaking the pitcher.† You will, therefore, reject the demand of the Deaf Mute, and condemn her to pay the costs." (*Piroux' Journal*, iv, 140.)

The distinguished Deaf Mute Berthier, commenting in the public prints on this specious reasoning, remarks: "These burdens and duties of marriage, is it then necessary that the Deaf and Dumb should know them more thoroughly than other men? Are there, for their peculiar use, definitions more philosophical and metaphysical? The first village lout who presents himself is allowed to marry, provided he says yes, and a doctor's diploma is almost necessary to the Deaf Mute who would marry."

The court, not being satisfied with the proofs offered of the intelligence of Marguerite L., named as interpreter, a curate, who demanded three months to enable him to communicate with the Deaf Mute. Whether, after this delay, the marriage was finally ordered, is not on record. We cannot but agree

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\* The *huissier* of the court had been proposed to her (in pantomime) as her future husband.

† A ceremony of marriage observed by the French gipsies.

with Berthier that the suit of Marguerite was subjected to delay, and perhaps to final refusal, rather on the ignorance of the court than of the Deaf-Mute suitor. It had been far more rational to have sent for some person already habituated to converse with the Deaf and Dumb; as was done in the next case we cite.

This case occurred in Provence, a few months later. The *Maire* of Rousillon scrupled to perform the ceremony of marriage for a Deaf-Mute bride, an intelligent dress-maker, but who could only express herself by signs. The case was carried to the civil tribunal of Apt, when (in December, 1842,) after argument on both sides, and an examination of the would-be bride in open court, by sworn interpreters, who were themselves well educated Deaf Mutes, "after a session that lasted two hours, the tribunal declared Victoire Mathiew competent to give an intelligent consent to be married; found no hindrance to this marriage; and ordered that the two interpreters who had already served the court, should assist the mayor at the celebration; that their interrogation should be reduced to the *proces verbal* by the mayor, and annexed to the *acte*\* of marriage, which should be signed by the same interpreters."† This decision, in connection with that already given in the case of Clergue, seems definitely to establish the doctrine that, in France, an illiterate Deaf Mute, if of sufficient intelligence, and able to clearly manifest his wishes by signs, is capable of entering into the contract of marriage, or any other civil contract.

In some other European countries, greater difficulties are opposed to the marriages of even educated Deaf Mutes. In Prussia, it is said, two Deaf Mutes are not permitted to marry, lest they should have Deaf Mute children,—a chance which experience in our own country has shown to be too small to be a valid pretext for forbidding a union, that in other respects promises to promote the happiness of the parties.

In Switzerland, at least in Berne, the largest of the Swiss Cantons, Deaf Mutes, even if well educated, cannot marry without having first obtained the consent of the courts of law.

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\* Equivalent, or nearly so, to what we call a *certificate* of marriage.

† *Piroux' Journal*, v. 20.

The following case, which we find in Piroux' Journal, the American reader can also consult in the chapter on the Deaf and Dumb in Beck's Medical Jurisprudence.

Anna Luthi was one of the most intelligent and best educated pupils of the Deaf and Dumb Institution of Berne. Her father was dead, and her mother re-married. She was a very pretty young woman of twenty-five, and possessed a fortune of thirty thousand francs. Her hand was demanded in marriage by one M. Brossard, who had been deaf from the age of fourteen, a skillful lithographer, employed several years in the Institution where Mademoiselle Luthi was educated,—a man of thirty-two years, possessing an excellent character, and already having laid up some money.

Some of the relatives of the demoiselle Luthi, and especially the authorities of her commune, jealous, it was said, of a stranger to the Canton becoming proprietor of the fortune which they would rather have fall to one of their own young men,—opposed this marriage; raising the pretexts that Brossard had abused his situation as her teacher to make her sign a promise of marriage; that he sought only her fortune, and that it was to be feared that the children of such a union would inherit the misfortune of their parents. This last allegation was countenanced by the local medical men, and the judges refused consent to the marriage. The lovers appealed to the Supreme Tribunal of Berne; and certificates from the first professors of medicine of that city were procured in opposition to the opinion of the local physicians, as to the danger of the children inheriting the deafness of the parents; letters were produced from the young woman to Brossard, sufficiently evincing both her intelligence and her affection; and the tribunal unanimously decided that: "In the circumstances of the case, a refusal of consent would be equivalent to a general and absolute prohibition of the marriage of Deaf Mutes, which, however, is not in the law; farther, that the very conditions in which the parties found themselves were a sort of guaranty that the demoiselle Luthi would find in him, more than in any other man, one capable of alleviating her situation, and that their pecuniary resources gave them the means to procure all necessary aid in taking care of their children."



The decision of the inferior court was accordingly reversed, and the marriage permitted.

In this country, where there is no law against the marriage of Deaf Mutes, the scruples of one magistrate or minister need not hinder a ceremony, if the parties can find another, more reasonable or more intelligent. Neither are they restricted, as in some European countries, to have the ceremony performed in their own *commune* or district. A marriage for which the parties have crossed a State line, or any other line, if celebrated in accordance with the local law, is as valid as if they had been married at home. They have thus a wide field in which to find officers qualified and willing to perform the ceremony.

The cases raised before the French and Swiss courts can hardly be considered legal questions with us. They are rather cases of conscience, and of common prudence, to be considered by the friends of a Deaf Mute, if they have any influence in aiding to, or dissuading from a marriage. In this country, where education has been placed, by the benevolence and justice of our legislatures, within the reach of almost every Deaf Mute of fair capacity; we should hardly object to a rule that uneducated Deaf Mutes ought not to marry; for we trust there will in time to come be very few Deaf Mutes in our country of such capacity and energy that they ought to be encouraged to marry at all,—left without education. Yet we have known several uneducated Mutes who have fulfilled, as well as ignorant speaking persons generally do, the duties of husbands or wives and parents.\*

Several hundred marriages have been contracted by graduates of the American Schools for the Deaf and Dumb within the last thirty years. In the majority of these cases, both the parties were Deaf Mutes. Though able to read and write, they always prefer to have the ceremony performed in their own language of gestures, whenever a clergyman can be found who

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\* Chancellor Kent observes, (4 Johnson Ch. Rep. 345,) "It is too plain a proposition to be questioned, that idiots and lunatics are incapable of entering into the matrimonial contract;" but he also decided, as we have already noted, that even an illiterate man "was not to be deemed an idiot from the mere circumstance of being born deaf and dumb."



understands it, or a good interpreter can be obtained. The superior impressiveness and solemnity of a ceremony so performed, to one performed in writing, is a sufficient reason for this preference. In cases of which we recollect some in which one or both of the parties were uneducated Mutes, the necessary questions and answers were of course either made by signs, or translated in that language by some person accustomed to communicate with the Deaf Mute. It ought to be more generally known than it is, that the intelligence of a Deaf Mute does not depend wholly, or perhaps even chiefly, on his skill in written language; that, on the contrary, it depends very much on the copiousness and precision of his colloquial dialect of signs, and on the extent to which he can converse by that means with those around him. A Deaf Mute possessed of such a dialect may be very intelligent though almost or quite illiterate. Hence it is that even a short residence at one of our institutions is so beneficial, even where only a very imperfect knowledge of written language was acquired; partly by the acquisition of an improved dialect of signs, which in an institution is very rapidly made, while the study of written language is slow, and partly from the amount of general information acquired by free conversation with the more advanced pupils. A Deaf Mute of naturally quick perceptions will acquire by mere observation, tolerably correct ideas of the nature and responsibilities of the marriage relation, even if wholly illiterate. And a Deaf Mute, who from interruptions to his term of instruction, has but a very scanty knowledge of written language, may be, and often is as capable of understanding and fulfilling these responsibilities and duties as those who hear and speak.

We pass on to another of the questions before us, "The proper mode in which a person profoundly deaf, and having little or no skill in the language of signs, or having no interpreter who understands signs, but understanding writing perfectly, should take a judicial oath, or assume any legal obligation?"

In the case of a Deaf Mute who cannot read and write, or but imperfectly, the rule of the law, as we shall hereafter show, is to employ a sworn interpreter familiar with his modes of communication. In the case of one who understands writing perfectly, it will appear by an English case we shall hereafter cite,

the proper mode is to *write* to him what you would *speak* to one who can hear; and let him *write* what the latter would speak. In the practical application of this rule there may be differences of opinion. The only thing essential is that the Deaf person should show in an unequivocal manner that he understands what is written to him, and that he assents to it where his assent is required. We have already cited an opinion of the learned Surrogate of New York, that a Deaf Mute could go through the whole ceremony of executing a will "by means of a conversation in writing." In like manner an oath can doubtless be administered in writing; but whether it is enough to write it before the eyes of the Deaf Mute, requiring him to read and sign it, (laying his hand on the Bible at the same time, or performing such other ceremony as the case may require,) or whether he should be required to copy it, is, in the absence of any statutory provisions, a question to be determined by the tribunal before which the Deaf Mute appears as a witness.

We would, however, observe, that though the copying of the form of oath secures greater attention to the words that compose it, it is not, in the case of a Deaf Mute, any test whatever that he understands it, any more than a foreigner's repeating after the magistrate a form of words in English would be a test that he understood it. It is therefore, in every such case, the duty of the judge to satisfy himself, by a conversation in writing, that the Deaf Mute who offers to take an oath has a just idea of the nature of the ceremony, and is aware of the consequences of perjury; and that he understands the purport of the particular oath placed before him. Piroux records a case in which a Deaf Mute presented himself as an elector, (voter.) He wrote out very readily and neatly, the prescribed oath of an elector; but on attempting to communicate with him by writing, no answers could be obtained to the simplest questions. When asked for instance, What is your name? he merely copied the words. An educated Mute, called in as interpreter, could not even communicate with him by signs, (perhaps because the signs he used were too artificial.) "In these circumstances the tribunal (of Narbonne) considered that the Deaf Mute could neither read nor write; and declared him incapable of fulfilling the functions of a communal elector, since it was impossible to make him comprehend what an elector is called on to do, nor what was that oath

of which he copied so well the formula, but to which he could attach no meaning.\*

Where the Deaf Mute, understanding writing either imperfectly or not at all, is reduced to the aid of an interpreter for taking an oath, or for any other legal proceeding, a teacher of the Deaf and Dumb will undoubtedly be, in most cases, the most proper person, as being accustomed to express in clear and impressive signs, moral and religious ideas.† The intimate acquaintances of an illiterate Deaf Mute, however readily they may converse with him on matters of every-day life, will, in most cases, be much embarrassed in endeavoring to express, in pantomime, such ideas as pertain to the taking of an oath. We shall hereafter cite cases in point.

When Deaf Mutes appear before the tribunals, whether as complainants, accused, or witnesses, much embarrassment often results from their inability to comply with the old established forms, adapted for those who hear and speak. The common law, indeed, permits the form of an oath, where it is not prescribed by statute, to be varied so as to adapt it to the religious belief of the witness, or to have it taken in that form which he deems most binding; and of course in the mode which will speak the most directly and powerfully to his conscience. With this principle in view, we shall have no difficulty in deciding that an oath ought to be administered to a Deaf Mute, (we do not mean a semi-Mute, or one who understands writing better than signs)—to a Deaf Mute we say, by means of an interpretation in his own language of gestures. Papists are sworn on the crucifix, Mahometans on the Koran, Hindoos on the waters of the Ganges, &c. The same principle should teach us that, if it be deemed essential to secure a religious sanction, or the dread of punishment beyond human power, for an oath taken by a Deaf Mute, it will suffice if, though not indoctrinated in the mysteries

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\* *L'Ami des Sourds-Muets*, ii, 76, 77.

† Though the advantage of having an interpreter, one skilled in the system of signs used in an institution, is of course greatest where the Deaf Mute is already acquainted with that system of signs; yet the power which the teacher acquires of exhibiting to his new pupils religious and moral ideas clearly in pantomime, enables him to impart such ideas to an uneducated Mute more readily than any other person could.

of the Christian religion, he still believes, as most Deaf Mutes, even if uneducated, do, that there are superior beings in the sky, by whom wicked men are punished. But, as we shall hereafter explain, the laws of some of the States have done away with the religious test as affecting the competency of the witness; leaving it as one of the grounds on which the jury shall judge of his credibility. And in the case of a Deaf-Mute prisoner, brought before the tribunals for formal trial—though naturally more weight is given to difficulties of form, when they make in behalf of the prisoner, especially of a prisoner whose double misfortune gives him such claim to compassion—we apprehend such difficulties can be got over by the simple rule of regarding it as the duty of the court or of the prisoner's counsel to do in his behalf, whatever he wants intelligence to do for himself. The questions that are on such occasions sometimes raised, as to the degree of capacity and accountability of uneducated Mutes, are more difficult of solution.

The *Code Napoleon* prescribes the forms to be observed in the case of an accused person, or a witness who is a Deaf Mute. "When a Deaf-Mute *accusé* does not know how to write, the president shall appoint as his interpreter the person who is most habituated to converse with him." "The same provision is made in the case of a Deaf-Mute witness. "In case the Deaf Mute knows how to write, the *greffier* (clerk) shall write the questions and observations made to him; they shall be put before the accused or witness, who will render by writing their answers or declarations, The whole shall be read aloud by the *greffier*." (Criminal Code, Art. 333.)

We doubt whether this particularity in prescribing forms is judicious. There are cases in which some persons skilled in the idioms and mental characteristics of the Deaf and Dumb as a class will make a better interpreter than the person most accustomed to converse with the prisoner, who, moreover, may possibly be deficient in honesty or intelligence, or both. In fact, it appears that the French tribunals usually call upon a teacher of the Deaf and Dumb, or a well educated Mute, to serve as interpreter in such cases; probably making the letter of the code defer to its spirit. And where an intelligent and reliable interpreter is present, and the Deaf Mute, as most Deaf Mutes do,

understands signs better than writing, it seems to us preferable that, even when able to read and write passably well, his examination should be conducted by signs. Not only will the questions put to him be, in most cases more fully understood; but his examination will more nearly approach, in solemnity and directness of appeal to his conscience, the oral examination of an ordinary witness. Often, however, a reliable interpreter may not be procurable; in some cases, even, the Deaf witness may not understand signs as well as writing; and the counsel on the one side or the other may wish to put questions of their own wording: in short, we give the preference to the rules of our common law, under which the courts, on good advisement, have full latitude of decision what mode of examination is best under the circumstances of the case. We shall hereafter cite decisions in point. (See *Snyder v. Nations*, 5 Blackford's Rep. (Indiana) 295. *Morrison v. Leonard*, 3 Car. & Pay. 127. *St. of Conn. v. De Wolf*, 8 Conn. Rep. 93.)

It is a point worthy of special mention, that some uneducated Deaf Mutes communicate with their intimate companions by means of a peculiar dialect, which even those who are conversant with the Deaf and Dumb would, at first, not understand. In a case which occurred in the interior of New York, an action of affiliation was brought in behalf of an uneducated Deaf and Dumb girl. She appeared before the court to give her evidence, accompanied by her sister as interpreter, who communicated with her, not by natural signs, or motions of the hands and fingers, but by motions of the lips which to the bystanders presented only uncouth and unintelligible mouthings and grimaces. The opposing counsel, believing that this was all a deception, wrote to Dr. Peet of the New York Institution for the Deaf and Dumb, for his opinion in the case. Dr. Peet called up two of his pupils, a brother and sister, who he knew were accustomed to converse by similar means, having been taught to understand the motions of the lips, aided by grimaces and gestures, by their father. He found them able to converse in this way to a considerable extent, and answered the lawyer's enquiry accordingly. It is a fact that when hearing has been lost at such an age that an imperfect power of speech remains, the Deaf person makes little or no use of those gestures on which Deaf Mutes from birth rely; but

communicates with those most intimate with him by his imperfect speech, especially if he cannot read and write, divining their replies by the motions of the lips, to which grimaces and some simple gestures will often be added for greater clearness and significance. And, as we have seen, cases sometimes occur in which the use of the voice may be lost entirely, only the motions of the lips and the accompanying grimaces remaining. A Deaf Mute from birth, or early infancy, naturally converses by means of gestures, unless a different mode of communication is early taught him; a Deaf person who learned to read before his misfortune, may acquire a decided preference for writing, or the manual alphabet, as a means of communication; but a child who becomes deaf after he is able to speak pretty fluently, but before learning to read, is naturally led to efforts to divine what is said to him from the motions of the lips and changes of the countenance, the most difficult and least certain mode of the three—though some Deaf persons of quick perceptions have acquired surprising readiness and expertness in *guessing* words from the motions of the lips. And as the case just cited shows, Deaf Mutes from birth sometimes learn to converse in a peculiar dialect of labial movements and grimaces.

[Since this paper was written, we have obtained fuller particulars of this case; and, as it seems one of some interest and importance, we annex the correspondence between the defendant's counsel and Dr. Peet, and also statements made by Hon. Bishop Perkins, counsel on the other side, and Joseph Barnes, Esq., one of the judges before whom the case was brought on appeal. The order of affiliation was made by two Justices of St. Lawrence county, (town of Gouverneur,) in March, 1850, and on appeal to the County Sessions, on the 4th and 5th of April following, after a very long and minute investigation, which seems to have turned wholly on the ability of Mrs. Thayer, the sister of the Deaf Mute, to communicate with her by motions of the lips, the order was confirmed—showing that men who seduce Deaf Mutes, must not expect to escape the consequences by the inability of the latter to testify against them.

*The Defendant's Counsel to Dr. Peet.*

CANTON, ST. LAWRENCE COUNTY, }  
 March 21, 1850. }

*Dear Sir*,—I was called a few days ago to attend in my professional capacity an examination before a magistrate in the town of Gouverneur in this county, in a case of bastardy; the object of the examination being to determine judicially who was the father of a child likely to be born a bastard of a young woman about 27 years of age, then pregnant, and who has been from her birth *deaf and dumb*.

The young woman, above described, was the principal witness of course, and gave evidence through another person, sworn to interpret truly the questions of the court to her, and her answers to the court.

The interpreter employed on this occasion was an elder sister of the Mute, who testified that the Deaf and Dumb girl had resided in the family for several years, and professed to be able to communicate freely with her by repeating to her the questions proposed, calling the Mute's attention to the movement of her own lips, and the expression of her countenance, in the act of speaking or whispering to the Mute, and by the movements of the Mute's lips, and certain inarticulate sounds uttered by the Mute in reply, the interpreter professed to ask and to receive answers from the Mute, respecting the subject of the investigation. For instance—the interpreter is desired to ask the Mute, "When and where the connection took place, from which she became pregnant?"

The interpreter looks attentively in the Mute's face, and moves her lips, as if repeating those words, (but uttering no audible sound, *nor making any manual signs*.)

The Mute then moves her lips (with considerable distortion of countenance,) and the interpreter states, "she says it was on a Sunday afternoon in the month of June. I was with a little girl picking berries by the road side, near a piece of woods; the defendant came there, and hired the little girl to go further away, on pretence of getting some berries, and while she was absent had the connection with me," &c.

The girl is uneducated, that is to say, she has been at no



school where persons of that description are taught, nor has she been taught any alphabet of signs,\* but 'appears to be tolerably intelligent for one of her condition, can write her own name, and can select and arrange in their proper order printed letters, so as to spell correctly her own name.

Now, sir, it seems to me incredible that a person deaf and dumb from birth, and consequently [having] no conception of articulate sounds, could be so astonishingly quick and acute, as to receive and impart freely ideas in the manner I have attempted to describe.

I believed, and still believe, that the person employed in this instance to interpret, was practicing a sheer imposition. If the Dumb can thus speak, it seems to me little short of miraculous, and that we need no schools specially devoted to their instruction.

May I be permitted, although an entire stranger and claiming no right to intrude my correspondence upon you, to ask you in your professional capacity, as a person having great experience of this unfortunate class of persons, whether in your opinion it is possible that a person mute and deaf, such as I have described, can converse and be conversed with in the way I have described?

Did you ever, in your intercourse with your pupils or others of that class of persons, discover or practice such a medium of communicating ideas?

I hope, sir, that the interest you may feel in the subject of my inquiry, or mere courtesy to a stranger, may induce an early answer to this hasty inquiry, and that you will pardon the liberty I take in asking this favor. Will you also please enclose *this letter* to me with your reply, if possible without delay.

I am, sir, very respectfully yours,

THOMAS V. RUSSELL.

To the Superintendent of the New York Deaf and Dumb Asylum, New York.

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\* We suppose Mr. Russell means a *Manual* alphabet.



*Dr. Peet's Reply.* ~~XX~~

*Dear Sir,*—In answer to the inquiry contained in your letter of the 21st inst., as to the possibility of holding communication with a person deaf from birth, simply by the motions of the lips, as if speaking, with or without articulate sounds, I reply, that the process which you describe as having been pursued in the case referred to, is precisely the method adopted in the German schools, where the teaching of articulation and of labial reading is practiced. For a Deaf Mute taught in this mode, it evidently makes very little difference whether the person speaking to him articulates his words audibly, or merely goes through the motions of the lips and other organs of speech.

Abstractly considered, therefore, I consider that method of communicating ideas possible. But two things are to be specially observed. In the first place, long and constant practice, both on the part of the Deaf person, and of the individual communicating with him, is necessary before this faculty is acquired, even in a limited degree; and secondly, the sounds uttered by the Deaf person and the motions of the lips, would probably, I may say in a majority of cases certainly, be unintelligible and unmeaning to all except the person or persons accustomed to them, and in the constant habit of thus communicating with him.

In the specific case which you present, I am, of course, unable to give an opinion, not being acquainted with facts and circumstances indispensable to the formation of a correct judgment. But if these sisters have been long in the habit of conversing in the manner you describe, I should consider it highly probable, their previous good character for veracity being presumed, that the questions and answers were truly and faithfully interpreted, not perhaps in the precise terms in which they are given, but in language which use had rendered intelligible to both.

In such a case, the signs made by the expressions of the countenance and the movements of the lips, are analogous to those made by the hands and arms. The use of neither of these sorts of signs indicates or requires a knowledge of the inflections of the parts of speech, or the laws which govern

the collocation and arrangement of words in connected discourse. The significancy and intelligibility of this sort of labial signs, like those of manual signs, would be the growth of slow progress, patient effort, and daily, even hourly use, for no inconsiderable length of time. In the case of persons who have become deaf in childhood, after learning to speak more or less, the motions of the lips serve to suggest words still remembered. *They* read words in those motions, as we do on paper, much less distinctly indeed: more like reading short hand, where some words being clearly made out, others are guessed at by the connection. But with one deaf from birth, the ideas must be attached directly to the motions of the lips, and accompanying grimaces, or distortions of the countenance. A person attempting to establish communication with a Deaf Mute in this mode, would naturally begin with single words, names of objects in sight, and of simple actions and obvious qualities. The meaning of each word or labial sign is thus first established by convention, and with time and unwearyed pains, a Deaf Mute may be enabled to communicate on any ordinary matters of daily use, by means of a peculiar dialect thus formed; the terms of which are to the speaking person words probably in an inverted and broken order,—and to the Deaf Mute labial signs, each representing directly an idea. In the case of the sisters now in question, it is probable they did not use the same phraseology that marks the conversation of other persons; that is to say, the words of which they imitated the labial motions were not in the order in which those who hear and speak arrange them, nor always the same words. The preference would be given for words more distinctly marked on the lips; and, to save the labor of learning synonymes, one familiar word would be made to represent several expressing similar ideas. Thus the terms they used would probably suggest the outlines only of ideas, made more definite by the accompanying expression of the countenance, and, when interpreted, to make them intelligible to others, would be reduced to a grammatical arrangement, as in the examples cited by you. The language, therefore, embodying the answers of the Deaf Mute girl to the question proposed to her, was not that uttered by her, in so many words, but the language of her older sister interpreting the idea intended to be expressed.

Instances have occurred in my own practice, and I may say not a few, of parents who have conversed with their Deaf children in this manner, and without the intervention of signs of any kind. Such cases, of course, are much more common where the children learned to speak before becoming deaf; but, as I have just explained, it is possible to establish with a bright and intelligent Deaf Mute from birth a quite copious dialect of labial motions and grimaces. There are now in this Institution two pupils, a brother and sister, whose father always communicated with them, and received their replies by a system of "labial reading." On the receipt of your letter, I called these pupils into my room for the purpose of making an experiment. I directed the brother to put to his sister certain questions which I presented to him in writing, and which she, of course, did not see. The result was satisfactory, though I remarked, that in some instances, the language of the question was changed by the substitution of familiar words for those less familiar. In reply to my question how they had acquired this faculty, they replied, that they had grown into it by long habit.

One word respecting the inference which you draw as to the necessity of schools specially for the Deaf and Dumb. A moment's reflection, I think, will show you the fallacy of your conclusion. Though this faculty of reading on the lips, and the power of expressing ideas by the motions of the vocal organs, or, I may say more correctly, by sounds inarticulate and unintelligible except to those accustomed to them, may, by long continued and laborious effort, be acquired by some Deaf persons—it is not possible for all. And even in the case of those few, it is obviously by no means available for general intercourse, whether for social enjoyment, or in matters of business, the power of communicating in this mode being (except in rare cases of the success of accomplished teachers of articulation) confined to the few with whom the Deaf Mute has been in constant communication for a long series of years, generally beginning in early infancy, as for instance, among the members of the same family. This was forcibly illustrated in the necessity for an interpreter between the court and the witness, in the case which you present.

And I may add that the dialect of labial motions and grimaces established in the family with a Deaf child will be too

meagre and imperfect to enable the Deaf Mute to attain such a mental and moral development as is easily and readily attained under the system pursued in a special school; such a development, in short, as might have made the young woman you mention a useful, respected and happy member of society.

You will perceive from the above, that I consider it possible for a person deaf from birth to receive and impart ideas in the manner you describe. Whether there was collusion between the sisters, is a question to be determined by facts, and not on abstract principles. It is, however, worthy of remark, that the supposition of collusion would imply the possibility of intercommunication of some kind between the parties.

Very respectfully yours,

HARVEY P. PEET.

THOMAS V. RUSSELL, Esq.

ST. LAWRENCE COUNTY SESSIONS.

*The Overseers of the Poor of the Town of Gouverneur*  
 vs.  
*George P. Tuttle.*

JOSEPH BARNES, Esq.

Dear Sir,—The above action was an appeal from the decision of two justices of the peace of the town of Gouverneur affiliating upon the defendant Tuttle, a bastard child born of Mary Coats, a Deaf Mute. It appeared that the said Mary Coats was deaf and dumb from her nativity and had received no scientific instruction; that her relatives were in low circumstances as to property, and no method of communication as to things not in sight was ever established between her and her sister, or any of her family, save by the motion of the lips and mouth. I was retained as counsel for the Overseers of the Poor. Olive Thayer was sister of the Mute, and the only medium of communication between her and the court.

When I was first retained, I was exceedingly incredulous touching the ability to communicate between Mary and her sister, in the manner alleged, particularly the abstract idea contained in an oath, or the capacity of the Mute, by motion of the lips,

to convey to her sister the fact of sexual connection, impregnation, and the name of the father; and the time and place of the sexual intercourse; and accepted a retainer with the greatest reluctance, and only after assurances of the neighbors of their entire belief in the integrity of Mrs. Thayer. I then, before the trial came on, visited Mrs. Thayer and the Mute, several times questioning the Mute through her sister, and sending the Mute for several articles, such as water and candles, into different rooms, and under circumstances where it seemed to me impossible any other medium than the lips of her sister could have been used to communicate my mandates, which were in every instance obeyed, and finally, in response of questions propounded by me, and communicated to her, by movements of her sister's lips, for the purpose of ascertaining whether she could understand the nature of an oath. I thought it quite plain she understood her, that she was to be brought before a court, and required to tell the truth as to who was the father of her child. She, by signs and acts intelligible to me, without her sister's aid, gave me to understand, if she told false, she would be taken from her child and imprisoned. I could not make out that she had any idea of an unseen Omniscient power, or of future rewards; but having satisfied myself that the Mute and her sister could communicate with each other, through motions of the lips by her sister, and signs and motions by the Mute, I entered upon the trial of the appeal with the zeal becoming a man who believed a Deaf Mute had been seduced by a man under the belief that sexual intercourse was marriage.

For some six or eight hours before the Mute was sworn, various questions were propounded, and directions given to Mrs. Thayer to direct the Mute by her lips to do certain things. In nearly every instance the Mute did the act required of her, and I was, and I believe the court and bystanders were all entirely satisfied that Mrs. Thayer made no motion, look or gesture, save with her lips, indicating to the Mute what was desired of her.

The counsel of the defendant placed, or caused to be placed, in a room near the foot of the stairs leading from the court room to the front door, or principal entrance, on the left hand side of the lower hall, an umbrella, and bid the sister to describe the location of the umbrella and send the Mute after it. The Mute left the court room, went down winding stairs, and sought the

umbrella in a room opposite to the one where the umbrella was placed. The Mute returned, saying, as Mrs. Thayer said, there was no umbrella there. Her sister was informed by the constable, that the Mute went to the room opposite the one she was directed to go to. Mrs. Thayer, as she said, explained to the Mute by motions of her lips that the umbrella was in the room opposite the one she went to. In an instant the eyes of the Mute flashed with intelligence, and she flew from the court room and brought the umbrella. Many other like experiments were tried, and most if not every one that related to common and familiar objects, were correctly responded to by the Mute, by doing the act demanded of her. I believe all were convinced. Mrs. Thayer made no sign save with her lips.

The order of filiation was confirmed by the court.

This statement, though an imperfect one, will, I think, give a tolerable idea of the very interesting trial on the affiliation of the child of Mary Coats, and, I hope, afford Mr. Peet the information he solicits in his letter to you.

I have written in haste and have no time to revise the literary execution of this account.

Respectfully, yours,

BISHOP PERKINS.

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CANTON, October 24, 1856.

DR. H. P. PEET:

*My Dear Sir,*—I this day received the enclosed statement from Hon. Bishop Perkins after so long delay. His statement is not as full as the facts would warrant, giving the several experiments in the court room, and being present myself, one of the Court of the County Sessions, well recollect the case: the court room full, not a person doubted her ability to communicate with the Mute in the way described by Mr. Perkins.

In addition to the statement of Mr. Perkins, I would say that the defendant's counsel, as well as Mr. Perkins, counsel for Overseers of the Poor, directed Mrs. Thayer to communicate with *Mary* by her lips—without the use of her hands—looking her full in the face and directing her to snuff the candle on the desk, which she did at once—then to extinguish a certain other candle

then burning in another part of the court room—select the Bible from two or three piles of books on the lawyers' table—then to point out to the defendant the father of her child in a crowded court room—send her for water and other things.

It is proper here to say, that many experiments to test the witness, at the request of the defendant's counsel, one after another, until she was sent for the umbrella down the stairs—passing the length of the court room—descending winding stairs to the centre hall of court house—jury rooms on either side of hall—turning right and left in the hall—opening door—taking the umbrella into the court room above to her sister. This seemed to be satisfactory to all parties.

I am, dear sir, truly yours,

JOSEPH BARNES.]

In Beck's Medical Jurisprudence, (vol. i, p. 855,) we find a case cited somewhat similar to that just mentioned as occurring in the State of New York. James Whyte was charged, in April, 1842, at the Circuit Court of Justiciary, held at Stirling in Scotland, with robbery. "The principal witness, James Shaw, was called, and one of the crown witnesses, named McFarlane, having been sworn to act as interpreter, McF. deposed that he had known Shaw from his earliest years, had been on intimate footing with him, and was, on that account, able to communicate with him better than any other person whom he knew; that Shaw was not born deaf, but became so by disease about the age of seven years; that he had been stone-deaf ever since, and had lost, in a great measure, the faculty of speech; that he could talk a little, but so very inarticulately that none but those who were in the habit of communicating with him could understand his meaning; that the mode of communicating with him was partly by signs, and partly by the motions of the lips. The interpreter having been desired by the court to repeat the oath to the witness, after communicating with him, stated that though he believed Shaw to be naturally honest and trustworthy, he found it impossible to convey to his mind any idea of an oath: that the subject of their communications had always been about ordinary country matters, and that as Shaw had received no education whatever, it was his decided opinion



that he could not comprehend the obligation of speaking the truth." In these circumstances, the court held that the witness could not be sworn, and he was accordingly rejected.

This decision is very unsatisfactory. A rule of law which may preclude a man who has been robbed from giving evidence against the robber, thus defeating the ends of justice, ought not, in our view, to be based on the mere ignorance of the injured party. His ignorance, (in this case certainly not from any fault of his own,) makes him the more helpless, and hence more deserving of the protection of the law. We think the inquiry ought to have been, not whether Shaw understood the nature and obligation of an oath,—but whether he was likely to tell the truth, and could relate clearly doings in which he was concerned. And if that fact was established to the satisfaction of the judges, his testimony should have been admissible for what it was worth.

It is a well settled rule of the common law, of general application in this country and in England, that no witness is competent, unless he has a conception of divine punishment being a consequence of falsehood. (1 Phillips' Evidence, 6.) Still even under the common law there seem to have been cases in which this rule was made to bend to the common sense view, that children of tender years, and others like them, are as innocent as they are ignorant, and when not perverted, or under the influence of interested persons, naturally and spontaneously tell the truth. No one will affirm that the ceremony of administering an oath always secures truthful answers from the witness; and we venture to say, there is no judge or lawyer, who would not sooner believe the artless relation of his child of five or six years, whom he has never known to tell an untruth, than the oath of an over-age witness whose interests or feelings are involved in the cause.\*

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\* In an old American edition of the famous English compilation, *Burns' Justice*, (Conductor Generalis, etc., by James Parker, New York, 1788,) we find the following (p. 170, *Evidence*): "In many cases an infant of tender years may be examined without oath, where the exigence of the case requires it; which possibly, being fortified with concurrent evidence, may be of some weight, especially in cases of rape, buggery, and such crimes as are practiced upon children. 2 H. H. (Hale's Hist.) 279, 284; Str. 700." Now a Deaf Mute, as ignorant and uncultivated as Shaw, is almost precisely in the mental and moral condition of a little child.



We see, therefore, no reason why, if such a Deaf-Mute witness should be found incapable of understanding the nature of an oath, that ceremony might not be dispensed with, and his testimony taken, leaving to the jury to judge, from the consistency of his narrative, from confirmatory circumstances, or evidence of others, and from the reputation of the witness among his acquaintances, what degree of credit should be attached to his statements. If it should be established that a Deaf Mute who, for lack of education, cannot understand the nature of an oath, is incompetent to give testimony against those who have wronged him, evidently this most unfortunate class of persons will be at the mercy of the evil disposed.

The extent to which advocates will push a point of form, like that under consideration, in order to gain an advantage in a bad cause, is strikingly exemplified in another Scotch case cited by Beck, (vol. i, pp. 863-4):

"An interesting discussion took place last winter in the High Court of Justiciary, as to whether or not a Deaf Mute was capable of giving evidence. A rape had been committed on a Deaf and Dumb girl, and her evidence was objected to by the counsel for the prisoner, who argued that though it was admitted to the fullest extent, that she had a perfect idea of the existence of a Supreme Being and a future state, and though she might be perfectly convinced of the obligation under which she lay to speak the truth, yet every one had as perfect a knowledge at least of these facts and obligations as she could possibly have, yet their testimony went for nothing unless confirmed by an oath: and as it was obvious she could not give an oath, her testimony must go for nothing." (Dunlap.)

Such pleading as this is a disgrace to the Scotch bar. To argue that a Deaf Mute, in the rudest state of ignorance, was not a competent witness, because he could not understand the nature and obligation of an oath, seems plausible; but to argue that one who has been educated, and is fully aware of the religious nature and solemn significance of an oath, and of the temporal and eternal consequences of perjury, is not a competent witness, merely because she cannot comply with a mere form, adapted to the use of those who hear and speak, is to outrage every sentiment of justice, every dictate of common sense. We cannot believe the court lent any countenance to such a plea.

Beck does not, in this place, give the decision; but the case seems to us to have been the same thus mentioned by him (on page 855): "The chief witness in a case of rape was deaf and dumb, but had been instructed, and her intelligence proved by an examination of her teachers."

In England, it has been decided that a person born deaf and dumb, even if utterly unable to read and write, is competent as a witness, provided he evinces sufficient understanding. This was determined in a case at the Old Bailey, in January sessions, 1786, on the trial of one William Bartlett for simple grand larceny. "John Ruston, a man deaf and dumb from his birth, was produced as a witness on the part of the crown. Martha Ruston, his sister, being examined on the *voir dire*, it appeared that she and her brother had been, for a series of years, enabled to understand each other by means of certain arbitrary signs and motions, which time and necessity had invented between them. She acknowledged that these signs and motions were not significant of letters, syllables, words or sentences, but expressive of general propositions and entire conceptions of the mind, and the subjects of their conversation had been in general confined to domestic concerns and familiar occurrences of life. She believed, however, that her brother had a perfect knowledge of the tenets of Christianity, and was certain that she could communicate to him true notions of the moral and religious nature of an oath, and of the temporal dangers of perjury.

"It was objected by the prisoner's counsel, that although these modes of conveying intelligence might be capable of impressing the mind with some simple ideas of the existence of a God, and of a future state of rewards and punishments, yet they were utterly incapable of communicating any perfect notions of the vast and complicated system of the Christian religion, and thence the witness could not with propriety be sworn on the Holy Gospels. The difficulty of arraiguing a man for perjury, whom the law presumes to be an idiot, and who is, consequently, incapable of being instructed in the nature of the proceedings against him, was also urged against the admissibility of the witness.

"But the court overruled the objections, and John Ruston was sworn to depose 'the truth,' and Martha Ruston 'well and truly to interpret to John Ruston, a witness here produced in

behalf of the King against William Bartlett, the questions and demands made by the court to the said John Ruston, and his answers to them.' The prisoner was found guilty, and received sentence of transportation for seven years. (Phillips' Law of Evidence, p. 14; Luch's Cases in Crown Law, p. 455.)"

The only essential difference between this case and the Scotch case, in which the evidence of John Shaw was rejected, is that, in the case of John Ruston, his sister professed to be able to communicate to him by signs "true notions of the moral and religious nature of an oath," whereas the interpreter of Shaw did not believe he could communicate any such ideas to him. Martha Ruston might have overrated the capacity of her brother, and McFarlane might have underrated the capacity of his friend. When we recollect that Shaw could hear and speak to the age of seven, it seems improbable that he should not have retained some notions on religious matters, and on the obligation of speaking the truth, though he might have lost the ability to express them clearly. We are persuaded that a person expert in the language of the Deaf and Dumb, and accustomed to express in that language the rudiments of moral and religious truth, would have found in Shaw, as well as in Ruston, sufficient intelligence and moral sense to admit of his evidence being received.

We have found but one American case, (*Snyder v. Nation*, 5 Blackford's Reports, 295, State of Indiana,) in which a Deaf Mute's comprehension of the religious obligation of an oath came in question. The action was one for assault and battery, and the plaintiff produced a Deaf Mute as a witness. The competency of the witness being objected to, the court caused him to be examined by means of signs, touching the extent of his knowledge of the nature of an oath. It appeared that he understood that perjury was punishable by law, but he had no conception of the religious obligation of an oath. The presiding judge, however admitted him to testify, and the interpreter having sworn that he could communicate with him by signs, he was examined as a witness through the interpreter. From this decision an appeal was taken, and Dewers, justice, in affirming the ruling of the judge at the trial, said: "That a witness is deaf and dumb, forms no objection to his admissibility: such a person, who can be communicated with by signs, is a competent witness at the common law, if he has sufficient discretion, and a proper sense

of the sanctity of an oath. But as the statute of Indiana provided that want of religious belief should not affect the competency of the witness, but should only go to his credibility, that that removed the objection to the witness that would otherwise have existed on account of his ignorance of the moral responsibility of the oath, apart from temporal punishment." So that it seems, from this decision, that ignorance on the part of a Deaf Mute of the religious obligation of an oath, would exclude him as a witness, except in States, like Indiana and New York, where the religious test is abolished. The extent to which this religious test is sometimes carried, may be judged from an English case decided in 1836. A woman was indicted for the murder of her husband, and their child, a girl of the age of eight years, was brought upon the stand as a witness. It appeared, that before the death of the deceased, the child had never heard of God, had never prayed, knew nothing of a future state of rewards and punishments, or of the nature of an oath; but, after that event, had been visited by clergymen, who instructed her as to the nature of an oath. When examined by the judge, she answered that she should go to hell if she told a lie; that hell was under the kitchen grate; but had no other intelligence as to religion or a future state. She was not allowed to testify. (*The King v. Rachel Williams*, 7 Car. & Pay. 320.)\*

We have before referred to the case of Morrison and Seward (3 *Carrington and Payne*, p. 127,) which is of interest as giving the views of an English judge, as to the manner in which the evidence of a Deaf Mute should be taken, when he is able to read and write. "In that case an apprentice was called as a witness. He had been born deaf and dumb, and an interpreter was sworn, who put questions to him by signs made with his fingers,† and was answered in the same mode.

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\* After the case just cited, the reader may not unprofitably consult an imaginary case reported by Charles Dickens; we refer to the rejection of the testimony of the boy Jo, on the coroner's inquest. (*Bleak House*, chapter xi.) We hope the time may come when, in other States as well as Indiana and New York, technical objections to "competency" may be done away with, and all the evidence, that a candid man would consider in making up his private opinion, admitted for what it may be worth.

† Evidently by a Manual Alphabet.

The interpreter said that he spelt every word to the witness completely. It appeared that the witness was able to write.

Chief Justice Best observed, I have been doubting whether, as this lad can write, we ought not to make him write his answers. We are bound to adopt the best mode. I should certainly receive the present mode of interpreting even in a capital case; but I think, when the witness can write, that is a more certain mode."

On this we observe that, where the witness can read and write *perfectly well*, the process prescribed by the French Code—questions and answers in writing—is undoubtedly the best mode; but there are very various degrees of skill in written language among educated Mutes; and the greater number of them understand written language more or less imperfectly. There are many Deaf Mutes whose knowledge of written language suffices for simple questions and answers on familiar subjects, who would yet be unable to comprehend, or would misapprehend the wording of many of the questions that would be put before them in a court of justice; and, on the other hand, will fail clearly to express their own meaning in words. The safest way is to provide them with an interpreter capable of explaining what they do not understand when written; and of interpreting their meaning, when their own skill in written language fails to render it truly.\*

Whether a Deaf Mute appears as a witness or as the accused person, some care and skill are requisite in conducting that preliminary examination in writing which is necessary to determine how far he is conversant with written language. If he answers some questions with evident intelligence, and distinctly intimates that he does not understand others, his examination may be cautiously proceeded with; though it would be better, if the questions he does not understand are of any importance, to wait for an interpreter. But if he either returns no answer to simple questions, or answers by merely copying the questions, or is found by various trials, (as by varying the phraseology of the questions,)† to answer at random, or as if he only caught

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\* Since writing the above, we find our views confirmed by the case of the State of Connecticut *vs.* DeWolf, which will presently be cited in full.

† E. g. ask, "Is your father living?" and after a while ask, "Is your father dead?" If he has not understood the questions, he will be apt to give contra-

the meaning of one or two words in the question, then an examination in writing would lead to nothing but mistakes and loss of time, if not to serious injustice to the prisoner through misapprehension, and an interpreter skilled in communicating with the Deaf and Dumb, or familiar with the particular dialect of the individual, is quite indispensable.

Hoffbauer, a German writer on medical jurisprudence, cites the case of one Brunning, an uneducated Deaf Mute, who had killed a cutler with whom he was traveling, and possessed himself of the cutler's shoes and effects.\* Brunning could write a little—that is, he could write his own name, and could copy words placed before him. When asked in writing, "*What is your name?*" he wrote "*J. Brunning;*" but when asked, "Is this the place where you killed the cutler?" he merely copied the words. When asked, "Where is your money?" after studying the words attentively, he indicated, by expressive gestures, that it had been taken from his pockets by force, as indeed was done when he was arrested. He, probably, merely understood the word *money*, and that awakened his indignation at the manner in which he had been treated. Other questions were put before him, which, from his gestures, his examiners supposed he understood; but those who, with a better knowledge of the characteristics of Deaf Mutes, read the account of the proceedings, will conclude that he merely guessed widely at the meaning from one or two words, or answered altogether at random. For instance, when the question, *Who killed the cutler?* was written before his eyes, he again wrote his own name, *J. Brunning*, and at the same time pointed to himself, not as we believe, intending to accuse himself of the murder, though his examiners so received it, but supposing that the question was an invitation to write his name. He had asserted (by signs) that the cutler had taken from him, while he slept, a box and money; and was asked, "Whether the sack shown to him was the same he had taken from the man who had stolen from his pocket?" the examiners, and even Hoffbauer in commenting on the case, supposed he

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dictory answers. This is for such questions as only require a *yes* or *no*. With some other questions, as: "How old are you?" "What is your trade?" "How long has your father been dead?" etc., the answers will at once show whether the question was understood.

\* This case occurred in December, 1764, in the Duchy of Magdeburg.

understood the question, because, on being invited to take what belonged to him, he carefully examined the box, and separated his own effects from the rest; but Dr. Itard of Paris, in a note on this passage, observes with reason, that no imperfectly educated Deaf Mute could clearly understand a question thus complicated, and loaded with pronouns. Brunning merely followed his instinct in claiming the box, and separating his own effects from the rest, without having any idea of the precise scope of the question placed before him. We have cited this case as an illustration of the danger of mutual misunderstandings in an examination by writing of a Deaf Mute who can only read and write very imperfectly.

It may sometimes happen that a Deaf Mute criminal may, from a hope of escaping punishment, feign to know much less of writing than he does. He may be aware that ignorance, especially in his circumstances, excites compassion, and is held in some measure to excuse faults. In such cases, Dr. Itard advises to accuse him of a crime much more serious than, and altogether different from that actually charged against him. If he can really read and write, his surprise and indignation will break out at the false charge in a manner to show what degree of skill in written language he actually possesses.\*

We will close this branch of the subject by giving at length an important case already referred to, the *State of Connecticut v. De Wolf*, (8 Conn. Rep. 93,) as it relates not only to the manner of examining this class of witnesses, but includes other matters, touching their character, and the nature and effect of their testimony. The prisoner De Wolf (a young physician) was indicted for an attempt to commit a rape upon the person of a deaf and dumb girl, named Celestia Bull,† on the 15th of June, 1828. She was sworn as a witness, and testified to the principal facts by signs, which were interpreted by Wm. W. Turner, a teacher in (and now the principal of) the American Asylum for the education of the Deaf and Dumb. The interpreter testified

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\* Note to Hoffbauer's *Médecine Légale*, Paris edition, 1827, page 223. (Translation of M. Chambeyron.)

† It may be proper to observe that Celestia was deaf from the age of two years, but that those who are deaf from so early an age, do not differ appreciably from those deaf from birth.



that Celestia had resided in the Asylum for five years; that she was well acquainted with the language of signs, and capable of relating facts correctly in that manner; that she could read and write, and communicate her ideas imperfectly by writing. It was objected on the part of the prisoner that she should not be allowed to testify by signs, but ought to give her testimony in her own words in writing, but the judge overruled the objection, and she was allowed to testify by signs. After the prisoner's counsel had cross-examined her in relation to the principal fact charged, and she had returned answers that went to discredit her testimony.\* the public prosecutor, before any attempt was made to discredit her otherwise than by such cross-examination, offered Polly Rowley as a witness to prove that Celestia had communicated to her the same story which she had related upon the trial. The prisoner's counsel objected, but their objection was overruled. Polly Rowley was then put upon the stand, and testified that in the fall of 1829, Celestia had communicated to her in writing the substance of what she now testified to upon the trial, but that she, the witness, did not know where the writing was. The prisoner's counsel objected to this testimony, unless the writing was produced and read to the court; but the objection was overruled. The public prosecutor then offered to prove that the general character of Celestia for truth was good: the prisoner's counsel objected, but the testimony was received. I think, said the presiding judge, that in prosecutions for rape, the general character of the witness who is the victim of the outrage may always be shown; but, said he, without deciding this point, let us look for a moment at the condition of this woman. She may fitly be said to be a stranger in her own neighborhood. Unable to hear or speak, she is excluded from society, and can be known only to a few of her relations and companions in affliction. Had the outrage been sworn to by a stranger passing transiently through the State, it would certainly have been proper for the State's attorney to prove the character of the witness. I think therefore, upon similar principles, that it was proper to support the character of this witness. The prisoner's counsel then at-

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\* The questions on the cross-examination were put in signs through another teacher of the Asylum, Rev. Mr. Brinsmate, who had been induced to attend the trial in behalf of De Wolf.



tempted to discredit the prosecutor's testimony, by showing that she had given different accounts of the transaction on oath and in writing;\* and Celestia having sworn that she had concealed the transaction for more than a year, assigning as a reason for it, the threats and influence of the prisoner, and her fear of him, the public prosecutor offered to show that the Deaf and Dumb have a sense of inferiority to other people, and that, as a class, they are easily intimidated; that they are credulous, sincere and submissive, and that this was the character of Celestia. The prisoner's counsel objected to the evidence, but the court admitted it. The prisoner having been convicted, an application was made to the Supreme Court for a new trial, on the grounds: 1st, that the court below erred in allowing the witness Celestia to testify by signs: 2d, in allowing evidence of her written communication to Polly Rowley, without the production of the paper, or proof that it could not be found after diligent search: 3d, in receiving the testimony just referred to as to the sense of inferiority felt by the Deaf and Dumb as a class, and their credulous and submissive character, &c.

In respect to the admissibility of this evidence, the court were divided. Justice Peters thought that the court below were right in receiving it; but Justice Dagget, and the three other judges thought otherwise; Dagget, who delivered the opinion of the majority, saying that they thought this decision on the trial erroneous, as opening a door for enquiries interminable, and where, after all, no satisfactory result can be obtained. But in respect to the examination of Celestia by signs, he said, the other judges concurring, it appeared she could communicate her ideas *imperfectly* by writing, but was capable of relating facts *correctly* by signs. The objection then, thus viewed, presents the absurdity, that the court erred in resorting to the most perfect mode of ascertaining the truth. The mode of examination adopted by the court was the next best to an oral examination, which, for many obvious reasons, is preferable to an examination in writing, but which could not be had in this case, from the condition of the witness. A new trial was ordered for the error of the court below, in receiving the testimony as to the contrast between the

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\* If this was so, it may have merely proceeded from her imperfect skill in written language.

Deaf and Dumb and other people in the matters referred to; and in allowing evidence of the contents of the written paper without producing it, or showing that it could not be found after a diligent search.\*

This case is an authority for assuming and declaring it to be the law, as it certainly is the dictate of reason, that in the examination of a Deaf and Dumb witness, that mode is to be adopted which will enable the witness most accurately to convey his ideas. To which we would add, for the reasons already given, that as a general rule (exceptions have been noted on previous pages,) an examination by signs through a competent interpreter is preferable to any other mode.

In regard to the other questions raised on this trial, there is room for difference of opinion. It appears to us that the rule of law which precludes parol evidence of the contents of a written paper, except upon proof that the paper is lost, should not be as stringently enforced in the case of conversations held by a Deaf Mute in writing as in other cases. A Deaf Mute who expressed her ideas, as was the case with Celestia, but imperfectly in writing, would, at the time of writing, explain and enforce her meaning by accompanying looks and gestures. Hence the actual impression made by the communication at the time, might be quite different from that which the mere writing would convey, especially to one not conversant with the peculiar idioms of the Deaf and Dumb. The writing would be but a part of the actual communication. In such a case, supposing that Polly and Celestia—as from the circumstance of the former being a selected confidant is a natural inference—were intimate, and understood each other perfectly, it is evident that the parol evidence of Polly would give a more correct idea of the purport of Celestia's communication than would be derived from a mere inspection of the writing itself, supposing it could be found; and it was probably a loose scrap of paper, thrown aside when the conversation ended. If, therefore, (which however does not clearly appear from the report, but is very probable from the circumstances, Celestia's imperfect acquaintance with written language, and the delicate nature of her communication, not to be easily

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\* It is our impression that the prosecution was dropped. Miss B. has since married a Deaf Mute.

put wholly in words by one little skilled in written language,) if therefore, the communication from Celestia to Polly was by writing in part, explained by looks and gestures, the very principle which required the examination of Celestia by signs, would consider the evidence of Polly as to the purport of the communication as of more weight than the writing itself; it would be in the language of Justice Dagget, "the most perfect mode of ascertaining the truth" that the peculiar case would admit.

With regard to the alleged credulous, submissive, and timid character of the Deaf and Dumb, two distinct questions arise: the admissibility of such evidence, and the correctness of the opinion expressed by Mr. Turner. We will consider the last first, as it seems proper to enquire whether we have any thing to prove, before we enter into a dispute about the introduction of our evidence.

We need hardly say that there are no peculiar traits of character inherent in the Deaf and Dumb, as such, merely as developments of some peculiarity of organization. What peculiarities they do display are the results of the peculiarities of their circumstances. They are comparatively ignorant, from the greater difficulty of obtaining knowledge; and if they are credulous, it is because credulity is usually in proportion to ignorance. He who usually hears but one side of a story, believes what he hears; he who hears all sides, learns to doubt, and to weigh probabilities. The Deaf and Dumb must feel, in society, a sense of inferiority, which makes them dependent and submissive towards those in whom they have confidence as guides. It is the same feeling that would make a blind man in a crowd, or in a strange locality, cling to the arm of a friend who enjoys eyesight. But where they think themselves acquainted with the ground, they are apt to display sufficient strength of will; indeed, willfulness is one of the most salient faults of a neglected or petted Deaf Mute, as of other neglected or petted children. Timidity is, we think, not a trait of their character. A man who recoils from a haunted house, may show as much courage as others who do not share that feeling, when there is a real, visible danger to be met; and if Deaf Mutes are liable to be intimidated, it is to be ascribed to their ignorance, exaggerating the power of him who attempts to intimidate them, and not foreseeing as readily as others would the means of defence.

It is obvious that, for Deaf Mute girls, the chances for forming a desirable marriage are much fewer than for their sisters and companions of equal or even inferior personal attractions, while the hope and desire of such an event is at least equally strong. Hence, they are apt to interpret as serious, to encourage by receiving them with evident gratification, attentions which had no worthier motives than curiosity and compassion, and which are continued merely because the flirtation is agreeable. De Wolf, we have understood, won the confidence of Celestia by his readiness in learning to converse with her by the manual alphabet and signs. A Deaf Mute, isolated in society, is peculiarly susceptible to attentions which at once flatter her vanity, increase her social enjoyments, and relieve the painful sense of inferiority to her speaking companions. He probably acquired an influence over her; and having, in some moment of temptation, gone farther than he wished to have known, it is very natural and probable that he should exert whatever influence her hopes, her fears, and her ignorance gave him, to induce her to keep the transaction secret.

If the ignorance of the Deaf and Dumb, their imperfect appreciation of consequences, and the difficulty for them of finding sympathy and judicious advice in delicate circumstances, have, as we believe, a tendency to induce want of moral strength in the way of appreciating and resenting such injuries as that in question, this should surely not make them the less worthy of or less needful of the protection of the law. It certainly appears to us that the rule of the law, that makes so long a silence after such an outrage, a presumption against the credibility of the witness, might be somewhat relaxed in circumstances like these. If it appeared that the injured woman was ignorant or doubtful of the consequences of disclosure, feared injury to herself in character and feelings, or had no intimate friend to whom she could feel free to confide such a secret, or who was capable of urging those reasons that lead us to prosecute offences for the good of society, or for the abstract interests of justice; under such influences it does not appear to us that her silence should make against her credibility, if her statements are otherwise consistent and probable. If the Deaf and Dumb are entitled to sympathy and consideration on account of their misfortune, the ignorance and want of moral strength, which are

the natural result of that misfortune, ought also to be considered.

We might extend our remarks on this point, had we such a report of the case as would show distinctly the *reasons* on which the admission of this evidence was pronounced an error. Since the ruling of the court below was supported by one out of five of the justices of the Supreme Court, there would appear to be some doubt on this matter, and it seems to us worthy of a fuller examination. We imagine the objections of De Wolf's counsel were taken under the impression that their client's cause was sufficiently prejudiced by the natural sympathy of a jury for a woman in her unhappy circumstances, and that the introduction of the evidence in question would augment that prejudice to a degree that might lessen his chance of a fair trial.\*

We will now proceed to the examination of the question, how far Deaf Mutes are responsible for their acts criminally, and will direct our inquiries first to the common law upon the subject, that being the law of this country and of England, where it has not been altered by statutory regulations.

By the mode of trial adopted under the common law, a man, when arraigned for a criminal offence, must answer whether he is guilty or not guilty; for if he admits himself to be guilty, no trial is necessary, and judgment passes against him at once. Now, it is impossible for a mute to comply with this regulation, and hence, at a very early period in the history of the English law, it was found necessary to ascertain whether a person so arraigned, stood mute from perverseness, or through the visitation of God? This standing mute through perverseness was regarded as an offence to be punished with the greatest severity; because, as the law then stood, a person indicted for any offence under treason could not be convicted, unless he had plead, that is, admitted or denied his guilt; and, without a conviction, there could be no escheat or forfeiture of his lands. One accused of crime, therefore, who knew that the evidence of his guilt was ample, and that conviction must inevitably follow upon his trial,†

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\* In this case, the second trial ordered by the court resulted in an acquittal.

† And we add one innocent of the crime charged, who knew that from the power of his accusers, or the prejudice against him, he had no chance for a fair trial, as was the case with old Giles Cory, in the evil days of the Salem Witch-

had a temptation to stand mute, as thereby his land would be preserved to his heirs, and not escheat to his lord or the crown. It was, therefore, the object of the law to extort from such persons a plea that would subject them at once to judgment, or put them upon their trial, and, with that view, punishment more rigorous and cruel than the immediate infliction of death was resorted to, to compel an answer. The prisoner was remanded back to prison, and left to starve to death, unless he answered. This horrible punishment was in some degree mitigated by a statute of Edward I, (3 Edw. I, c. 12,) at least so as to lessen the duration of the prisoner's sufferings.\* By the practice under that statute, he was "put in a low dark room, laid upon his back, without any covering except for his privy parts, and as many weights were laid upon him as he could bear. On the first day, three morsels of the worst bread were given him; on the second day, three draughts of standing water;" and so on, alternately, he was supplied with this quantity of bread one day, and of water the other, and kept in this condition till he died, or, as the judgment ran, until he answered. This most barbarous statute, though long fallen into disuse, was not repealed till the reign of George III, when it was enacted that persons willfully refusing to plead, should be taken and deemed to have plead guilty. This barbarous punishment of the "peine forté et dure" was one of those relics of feudal abuses swept away, in most of the American States, soon after the Revolution.†

There is, we have the satisfaction of believing, no reason to suppose that those deprived by nature of the power of speech were, through ignorance or judicial mistake, subjected to this terrible punishment, for it appears that as early as the reign of Henry III, it was provided that if the prisoner stood mute, the court should immediately summon a jury to try if he stood mute through obstinacy, or by the visitation of God; and this

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craft, by a "barbarous usage," says the historian Bancroft, "never again followed in the colonies, he was pressed to death for refusing to plead."

\* If a sentence to be racked to death can be considered a mitigation of one to be simply starved to death.

† It was enacted in New Jersey, in 1795, "That the law relative to the peine forté et dure shall be and hereby is abolished." (Paterson, 163.) Probably, if any case had occurred in which it had been enforced, it would have been abolished sooner.

was afterwards made obligatory upon the court by statute, (8 Henry IV, 2.) If the jury found that he remained mute from natural infirmity, a plea of not guilty was recorded, and it became the duty of the court to act as his counsel, and see that he had law and justice—a practice which has continued down to our own time. See the case of the *Commonwealth of Massachusetts v. Bradley*, (1 Mass. Rep. 103,) where a prisoner indicted for the murder of his wife stood mute, and a jury was empaneled who found that he did so by the visitation of God. And see *The King v. Pritchard*, 7 Car. & Pay. 303; *The King v. Dyson*, *ibid*, 305, u. a. In the State of New York, this inquest by a jury is superseded by the provisions of the Revised Statutes, (2 R. S. 730, § 70,) that if a prisoner does not confess himself guilty, a plea of not guilty is recorded, and he is put on his trial.

What was done in the early days of the English law, where it was found that a prisoner stood mute by visitation of God, does not distinctly appear. Brooke, whose work was published in 1576, states the case of a man arraigned for felony in the reign of Edward III, who could neither speak nor hear, who was, therefore, remanded to prison. (Brooke's *La Grande Abridgment*, Title Crown, 107, 217.) The case mentioned by this writer is probably the one referred to in the Year Books, where, from the very brief report that is given, (Book of Assize, xxvi, 27; 26 of Edw. III,) it appears that Skip, Justice, informed his brethren that he had a case at the circuit of a man indicted for murder, who could neither speak nor hear; and it would seem that the court did not know what to do in such a case, and finally concluded to remand the man back to prison, upon the statement of Hill, Justice, that he had a case in which a man who was mad, *furiosés enragé*, slew four men, and that he would not arraign him, but sent him back to prison, where he remained until the king pardoned him. Upon the authority of this case, Crompton, in his work on the authority and jurisdiction of courts (1594,) expresses a doubt whether a man unable to speak or hear could be put upon his trial for a criminal offence, by reason of his inability to plead to the arraignment; and how the law stood in such cases, down to the reign of Charles II, we are unable to state. By the common law, no man can be held accountable, criminally, for his acts, who, from



natural infirmity, is incapable of distinguishing between good and evil, (2 Hawkins' Pleas of the Crown 2, note 2; 1 Hale, 34;) but the Deaf and Dumb, though they may be in this condition, are not necessarily so, as a consequence of their infirmity, and any positive rule of law founded on that presumption, would be erroneous. Whether a Deaf Mute is in this condition or not, is not a question of law, but a question of fact, to be ascertained in each particular case. In the celebrated work of Sir Matthew Hale upon the Pleas of the Crown, which did not appear till after his death in 1676, we find the law on this point stated more intelligibly and rationally than seems to have been the case before his time. "A man," says this great lawyer, "who is *surdus et mutus a nativitate*, is, in presumption of law, an idiot, the rather because he hath no possibility to understand what is forbidden to be done, or under what penalties. But if it appear that he hath the use of understanding, which many of that condition discover by signs to a very great measure, he may be tried, and suffer judgment and execution, though great caution is to be used therein." (Hale's P. C. 34.) And the view thus taken of the law by this eminent judge was sustained in cases subsequently adjudged. The question came up directly for decision in a case which occurred at the old Bailey in 1773, before Mr. Justice Blackstone, the celebrated author of the Commentaries. A man named Jones was indicted for felony. Upon being put to the bar, he appeared to be deaf and dumb. A jury was accordingly empaneled, who found he was mute through the visitation of God, but it appearing that he was in the habit of communicating his ideas to a woman of the name of Fanny Lazarus, she was sworn and examined as to the fact of her being able to make the prisoner understand what she said, and it appearing that he was capable of receiving intelligence from her by means of signs, he was arraigned, put upon his trial, convicted and transported. (*The King v. Jones*, 1 Leach's Crown Cases, 102.)\*

To the same effect was the decision in the case of Elizabeth

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\* Would there have been any remedy on the part of the prosecution if the prisoner's intimate friends had refused to fulfill this unfriendly office of interpreter, thus aiding to procure the transportation, or possibly hanging of their friend and relative?



Steele, (Leach's Crown Cases, 451.) She was indicted for grand larceny, and standing mute, a jury was empaneled, who found that she was mute by the visitation of God. She was then remanded to prison, and the question was submitted to all the judges whether or not she could be put upon her trial for the offence. The judges accordingly assembled to consider the case, and were of opinion that the verdict of mute by visitation of God was no bar to her being tried upon the indictment; for they declared that although a person *surdus et mutus a nativitate*, is, in contemplation of law, incapable of guilt upon a presumption of idiotism, yet that presumption may be repelled by evidence of that capacity to understand by signs and tokens, which it is known that persons thus afflicted frequently possess to a very great extent; that great diligence and circumspection, however, ought to be exercised in so critical a case; and that if all means to convey intelligence to the mind of such a person, respecting the nature of the arraignment, should prove ineffectual, that the clerk might enter the plea of not guilty, and it would then become the duty of the court to inquire of all those points of which the prisoner might take advantage, to examine all the proceedings with a critical eye, and to render to the prisoner every possible service consistent with the rules of law.

Upon this decision being given, the prisoner was again arraigned before Mr. Justice Heath, and when the clerk put the question to her whether she was guilty or not guilty, she answered "You know I cannot hear." The judge, upon the supposition that she could hear, said, "Your case has been considered by all the judges, and they think, even though you cannot hear, that you should be tried on the indictment; it will therefore be in vain for you to elude arraignment by pretended deafness, for you will lose by such pretence the advantage of putting questions to the witness." But all endeavors proving ineffectual, a jury was (again) sworn to say if she stood mute by visitation of God, and having pronounced that she did, the same jury were then sworn in chief to try her, and the evidence being very clear, she was found guilty, and sentenced to transportation for seven years. It would seem from the statement that the woman, when asked "Are you guilty or not guilty?" answered, "You know I cannot hear," that she had lost her hearing at so late an age as to retain the faculty of speech; yet from the difficulty of

communicating with her, we may presume she could neither read writing nor read on the lips. While the case of Jones shows that under the common law, a Deaf Mute from birth, yet not an idiot, may be arraigned and tried, if one can be found capable of communicating with him by signs, this case of Elizabeth Steele indicates as we understand it, that even if there be no means of communicating to the deaf and illiterate prisoner, yet, if he appear capable of distinguishing between right and wrong, he may be tried, the court taking care that justice is done him; and if found guilty is liable to the same punishment as one possessed of all his senses. We are constrained to suppose that this woman must have been a notorious and inveterate offender, else the penalty inflicted, seven years' transportation for simple theft, seems unreasonably severe for one in her circumstances, to whom imprisonment or transportation, separating her from all with whom she could hold intercourse, must have been far more severe a punishment than for those not so afflicted. While, therefore, we cite these cases to show that it is the law in England and in the United States that Deaf Mutes are, when they evince an intelligence and ability to distinguish between right and wrong, responsible to the law criminally, and may be put upon trial, notwithstanding the difficulties presented by the forms of proceeding, we would urge that their unfortunate and peculiar circumstances should be taken into consideration to secure mitigation or even remission of punishment, so far as the one or the other may be judged consistent with the ultimate good of the unfortunate prisoner on the one hand, and of society on the other.

We recollect two or three cases occurring in New York and New England, in which Deaf Mutes were arraigned for criminal offences; but have not the particulars. We will, however, cite from Beck's Medical Jurisprudence, the case of Timothy Hill, indicted for larceny in Massachusetts. As in the English case of Jones, resort was had to an interpreter who understood his signs. One Nelson, an acquaintance of the prisoner, was sworn to interpret the indictment to him, as it was read by the clerk, which he did, "by making signs with his fingers;" after which the court ordered the trial to proceed, as on a plea of not guilty. The report of this case is too brief and defective to enable us to judge what degree of intelligence Hill possessed, or whether

the "signs on the fingers" were gestures, words spelled by a manual alphabet, or a mixture of both.

The provisions of the common law respecting those who stand mute, have been incorporated in the statutes of some of the States—as for instance, in Ohio and New Jersey—without any provision for the case of the Deaf and Dumb. The statutes in question direct that where the prisoner is found to stand mute by visitation of God, he shall be remanded to prison, and not proceeded against till he shall have recovered. We presume, however, this provision would not be held to be applicable to the Deaf and Dumb, in whose case there can be no expectation of *recovering* the faculty of speech; and therefore the rule of the English common law, already stated, will remain in force, notwithstanding the omission to provide for the case of the Deaf and Dumb in the statutes in question.

A more unsettled question under the common law, is whether judgment of death can be pronounced against a Deaf and Dumb person when convicted of a capital offence. It seems to have been doubted, as they have not pleaded to the indictment, and can say nothing in arrest of judgment. (4 Blackstone, 324; 2 Hale's P. C. 317.) Both Hale and Blackstone appear to have been in doubt upon the subject, and where such authorities have hesitated, an opinion is not to be expressed lightly. But it seems to us that if a man is held to be sufficiently accountable to be put upon his trial, and to be convicted of a capital offence, that it follows, from the same reason of accountability, that he should suffer the punishment. If he is not responsible for what he has done for want of capacity to distinguish between good and evil, right and wrong, he is not to be convicted; but if he is convicted, it is a finding on the part of the jury that he is accountable in a criminal sense, and if he is, there seems to be no reason why he should not suffer the punishment consequent upon his willful acts. It is declared by the conviction that he committed an act, the nature of which he comprehended as well as those who are possessed of the faculties of speech and of hearing, and if he is not to be punished for it, why convict him at all? If he cannot be punished, because he is unable to hear, plead or speak in arrest of judgment, (things which under an amended system of proceedings, he may do by his counsel,) why put him upon his trial? Why not stop the proceedings at once, as was

the case in the early state of the English law, when it is ascertained that he cannot hear what takes place, or speak for himself. Either the mere fact that he is deaf and dumb exempts him from all accountability to the law, whatever may be the degree of his intelligence or of his capacity, or it does not; and if it does not, but if he is accountable by reason of his capacity to discriminate right from wrong, then, like any other human being, he must suffer the consequences of his willful act. The doubt entertained upon this subject springs out of the tenderness of the law towards the accused, where death follows conviction, and the strictness with which it insists on the due observance of every formality in such cases. The law provides that a prisoner, convicted of a capital offence, should be asked, before his doom is pronounced, if he has anything to say why final judgment—judgment of death should not be rendered against him. The reason given for this proceeding (*The King v. Speke*, 3 Salkeld's Reports, 358; 3 Mod. 265,) is that he may have a pardon to plead, or because he has the right at any time after the verdict, and before sentence, to move in arrest of judgment, if any ground exist for such motion—such a motion admitting all the proceedings upon the trial, but assuming or insisting that upon the face of the record itself, the judgment which the court is about to pronounce would be erroneous. In addition to which, the practice is adhered to, that the prisoner may have an opportunity to address the court in mitigation of his conduct, to desire their intercession with the pardoning power, or to cast himself on their mercy,—appeals that are sometimes followed by the recommendation on the part of the court to the executive for a pardon or commutation of the prisoner's punishment. But justice is not to fail because a Deaf Mute, convicted as a responsible being, cannot make this appeal, or hear or respond to the enquiry put to him. If he is able to converse by signs or by writing, the question may be put to him, and answered in that mode. But if he is not able to understand the question, even put in signs, it seems to result that punishment must still follow conviction, to the disregard of a form, compliance with which is impossible. It is not to be supposed that any Deaf-Mute person, wholly deprived of the power of communicating with any one by signs or otherwise, shut out by Providence from all communication with his kind, would be convicted by any

jury for a criminal act, as a responsible being. A Deaf Mute is, in presumption of law, an idiot, not punishable criminally for his act, until it is shown that he is endowed with sufficient intelligence to enable him to discriminate between right and wrong, and the burden of showing this is upon those who prosecute him, or seek to bring him to justice. It is impossible to know this, unless there is some means of communicating with him, to ascertain what his ideas are, or the nature and degree of his intelligence; and if means exist for ascertaining that, sufficiently to satisfy a jury that he knew perfectly well what he did, and that he did it *animo felonico*—that is with a willful or felonious intent,—the same means can be employed for ascertaining his views upon the question put to him by the court, why judgment should not be pronounced against him. That is, the amount of evidence which would be sufficient to satisfy a jury that he had the requisite intelligence to make him accountable for his acts, would equally establish that he had sufficient capacity to understand the nature of the enquiry propounded by the court, and to avail himself of anything that he might think could prove serviceable to him. (And it follows that if he evidently has not the capacity to do this, the jury should find that he had not the capacity to commit the crime charged.) It has been shown moreover that, in all such cases, it is made the especial duty of the court to do all for him that he might do for himself; to examine all the proceedings with a critical eye, to look for every point of which he might take advantage, to proceed with the greatest circumspection, and, in short, to render him every possible service, up to the very moment when judgment is rendered against him, that can be done consistently with the rules of law. There is little reason, therefore, to apprehend that any Deaf Mute would be convicted and sentenced upon a capital charge, without having every advantage that any other prisoner would have upon a capital charge, except that important one of hearing, like ordinary persons, all that transpires on his trial,\* and of addressing the court by the

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\* When we recollect how important is this privilege to the prisoner, of hearing the evidence against him, as in many cases he alone can give a clue to clear up circumstances that make against him, we would strongly insist that, where a Deaf Mute is tried, all the leading points, at least of the evidence and pleadings, ought to be communicated to him, either by signs or by writing.

faculty of speech. If a Deaf Mute has committed murder—if he has taken life willfully, intentionally—that is, with what the law denominates malice aforethought—he is not to escape the punishment with which the law visits the perpetrator of such a crime, because he is deprived of the faculties of hearing and speech. Every thing is to be done for him in the course of his trial, and up to the moment that sentence of death is passed upon him, that can possibly be done for a person laboring under such an infirmity; but he is not to escape the punishment due to his crime, because a form cannot be gone through with on the part of the court, which necessarily could only be intended to apply to cases where such a procedure was possible. If it is supposable that a Deaf Mute would be convicted of a capital offence, the punishment of which was death, who could not be brought to comprehend the nature of the enquiry put before sentence, then all that can be said is, that his incapacity to comprehend would be no barrier to the right and duty of the court to pass sentence upon him. In every case, the enquiry should be put and interpreted to the prisoner, and his answer, if any, interpreted to the court. If he cannot, or if he will not be made to understand it—for want of comprehension would very naturally be assumed by a prisoner so situated, if he thought thereby that he could save his life—then the duty of the court is to proceed and pass sentence upon him. If the court are of opinion that the jury were wrong in convicting him, they can defer sentence, unless restricted to pronounce it within a certain time, until the prisoner's case can be laid before the executive for pardon; but if the executive will not interfere, the court must pronounce judgment, and order execution.

It follows from this reasoning, supplied to us by an eminent judge, that as the verdict of the jury, pronouncing the Deaf-Mute prisoner guilty of the crime charged, also pronounces that he had sufficient capacity to commit the crime, therefore this question of capacity is one of the points they are to take into consideration. We would suggest, as a question worthy of the consideration of criminalists and jurists, whether, as the mind naturally revolts from inflicting the extreme punishment of death upon one already laboring under an infliction so worthy of compassion, whether a distinction cannot be made between the capacity to commit greater and less crimes; whether it might not be

adjudged, for instance, that a Deaf Mute without instruction, who knows nothing of the divine, and very little of the human laws against crime, but whose passions make him dangerous to society, may not be adjudged capable of committing murder in the *second*, but not in the *first* degree. We know of no case, under English and American law, in which a Deaf Mute has been capitally convicted. In the few cases of a capital charge against such persons, to be hereafter cited, the proceedings were stayed on points of form. The provision of the French law, which empowers the jury to return a verdict of "Guilty, with extenuating circumstances," of which we shall hereafter give instances, thus, by saving the life of the prisoner, reconciling conscience with compassion, appear to us more rational than the practice under our common law.

To make this view of criminal jurisprudence, as regards the Deaf and Dumb, as complete as possible, we will give an account of the views entertained in Germany, and of the law as there established, respecting the legal responsibility of the Deaf and Dumb, translated from the work of Henke, one of the leading German writers on medical jurisprudence. (*Lehrbuch der Gerichtlichen Medecin, von Adolph Henke. Stuttgart, 1832: 7th edition, §§ 289, 290, 291.*) "As it must always be a question of doubt whether the Deaf and Dumb are responsible beings, where they have committed illegal acts, their mental condition should be ascertained in most cases through the instrumentality of teachers of the Deaf and Dumb, educated in private or public institutions, as this class of persons can more readily and satisfactorily enquire into the facts than legal physicians,\* as they are more familiar with the condition of such persons, with whom they come constantly into contact, or the teacher at least should be consulted by the legal physician. (§ 290.) Under the denomination of Deaf and Dumb are comprised not only the Deaf who cannot speak, but those who have learned to speak more or less, and those who have lost their hearing too early to acquire language in the ordinary way. In consequence of the imperfection of their senses, the Deaf and Dumb must *invariably* be defi-

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\* In Germany, physicians, denominated *legal physicians*, are appointed by the government to enquire into and report upon medical questions connected with crimes.



cient in regard to *mental development and cultivation*, and are especially prone to violent passions, to sudden eruptions of temper, to irascibility, and are in general cunning, deceitful, unreliable, and are perversely prone to adhere to their purposes. (§ 291.) As respects their accountability to the law, the Deaf and Dumb are on a par with idiots and imbeciles, unless their natural infirmity and intractability of mind has been more or less removed by a good education while young, and even if their intelligence is cultivated, they always experience difficulty in understanding others, and in making themselves understood.\* In respect to their legal liability or accountability for their acts, the following points should always be considered: 1. The degree of their mental infirmity. 2. Whether the law violated could be understood by them. 3. Whether the exciting cause of the act was different in their case from what it would be in the case of an ordinary person. All these questions, however, can be answered only after a careful investigation of the individual case.†

The question, how far uneducated Deaf Mutes are responsible to the criminal law for their acts, has often been argued within the last thirty years before the French courts. One of the earliest cases we have met with is recorded in *Bebian's Journal*, (1826.) An officer, with two assistants, went to the house of a peasant near Rodez, to serve an execution. While they were making an inventory of the movables, they discovered the peasant at a distance endeavoring to drive off a cow, which was the most valuable article of his property. He was instantly pursued, and soon overtaken, knocked down, trampled on, and the cord by which he led the cow wrested from him. While one of the officers led the cow in triumph, and another dragged along its unfortunate master by the collar, the son of the latter, returning from his work in the field, saw at a distance the affray. This was a Deaf Mute of about twenty years, tall and vigorous. Furious and indignant at the way he saw his father treated, he seized the first club at hand, fell upon the aggressors with a

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\* This view of an intelligent German writer we commend to those whose imaginations are taken by the German system of teaching Deaf Mutes to speak, as more attractive than our own system.

† We shall hereafter give a case of the trial of a Deaf Mute for murder, in Rhenish Prussia, in which, it will be seen, he was adjudged not responsible, precisely on what grounds however does not appear.



savage yell, and after a very brief struggle, put all three to flight. Complaint was, of course, made against father and son for rebellion and violent resistance of the officers of the law. The Deaf Mute, when brought before the tribunal, could not be made to comprehend that he had committed any offence. He supposed he was brought there in honor to his courage. When his late antagonists appeared in court, he was with difficulty withheld from attacking them, and endeavored to explain that he saw two robbers, who ought to be punished. Notwithstanding the grave nature of the offence, the task of his advocate was not difficult. All minds and hearts were already prepossessed in his favor, and the advocate had no difficulty in persuading the jury that this youth was not amenable to laws of which he had and could have no knowledge; that he had only fulfilled the most sacred of duties, and exercised the first of rights in defending his father and his property.\*

In such a case as this, there can hardly be two opinions. But though we can readily admit that an uneducated Mute is not amenable to the artificial laws of society, we should still hold him amenable in cases where he violates rights in others, which he shows himself so prompt to defend in his own case. The Deaf Mute of Rhodéz showed a keen appreciation of the rights of property, and in uneducated Mutes generally this sentiment of property is strong. They must, then, know that they do wrong to steal; and that they are conscious of this is farther proved by the fact, that when they do steal, they steal with secrecy and contrivance, like other men. We cannot, therefore, by any means approve of the defence set up in several cases in France, for uneducated Mutes accused of theft, namely, that an uneducated Deaf Mute is not an accountable moral agent. The first case we have met with in which this plea was advanced, is that of Nadau, also recorded in Bebian's Journal, (p. 42.) This uneducated Deaf Mute was, in July, 1826, brought before the Court of Assizes of Paris for theft. He had already been more than once brought before the tribunals for similar offences, and had suffered a year's imprisonment for theft. M. Paulmier, a distinguished teacher of the Deaf and Dumb, served as interpreter. The *avocat-général* remarked, that "the involuntary

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\* Journal de l'Instruction des Sourds Muets et des Aveugles, Paris, 1826, p. 39.

interest that attached to the accused ought not to make us forget the evidence of the culpability of the prisoner. It has been shown by the depositions of the witnesses, and by the examination of the prisoner through M. Paulmier, that he had very distinct notions of good and evil; that he hid himself to steal; that he hid himself to sell what he had stolen; and, finally, that he confessed with confusion the faults he had committed. Besides, if we suppose that Deaf Mutes have not as precise moral ideas as other men, this Nadau had already been warned by several judicial condemnations, that society punishes those who steal the goods of another. He farther asked the jury to observe how dangerous it would be to grant impunity to the accused. It would be to deprive the unfortunate Deaf and Dumb of the resources they find in labor; for no person would dare to employ them in his service, if it should be decided that the law is impotent to punish their faults.

M. Charles Ledru, who appeared on behalf of Nadau, rested his defence on the ground that a Deaf Mute without instruction is not capable of a *delict*. He maintained that the idea of justice and injustice can only reach the intelligence by the aid of speech, or of words, resting especially on the authority of M. de Bonald, to whose philosophy he took pleasure in rendering public homage. Supposing that the accused could be held culpable after the law of nature, he asked if the civil law could be applied to a man who could never have known it. He concluded by saying that society could not complain of offences committed against her by an unfortunate whom she had abandoned to himself in the midst of a world which is to him an inexplicable mystery. Instead of imprisoning the uneducated Deaf and Dumb, would it not be better to instruct them? This reasoning made such an impression on the jury, that Nadau was acquitted, after a short deliberation.

This doctrine, that the idea of justice or injustice, or any other moral or religious idea, can only reach the mind by means of words, is, we need hardly say, utterly false and groundless. If such were the case, we should, of necessity, despair that our Deaf-Mute pupils could ever attain such ideas. What knowledge of words they possess is, in most cases, acquired through explanations in gestures and in all cases gestures form the readiest means of explaining words to them. It is absurd, then, to imag-

ine that words, whose meaning they have learned only through gestures, can convey to them ideas for the expression of which gestures are inadequate.

But though we utterly repudiate the philosophy which makes the possession of a moral and religious sense depend on the possession of a *verbal* language, we fully admit that, with the uneducated Deaf and Dumb, the intellectual and moral faculties labor under great difficulties and disadvantages as to their development. Some of this class of persons are hardly superior to idiots, and from this low point, their intelligence and moral sense vary over an extended scale, up to nearly or quite the average of ignorant persons generally, who are not Deaf and Dumb. Common sense teaches us that where a Deaf Mute commits a wrong, knowing that it is a wrong, or at least knowing that such acts are punished when detected, he should be punished, without regard to metaphysical speculations as to his exact moral state. But his unfortunate condition may with justice be urged in mitigation of the punishment, and this rational view is the one now prevailing in France. Several instances are recorded, in which, as in the case of Nadau, Deaf Mutes have been acquitted by juries in consideration of this supposed want of moral accountability; but, in other later instances, the verdict has been so framed as only to secure a mitigation of the punishment.

M. Edouard Morel, a very eminent French teacher, commenting on one of those cases in which the plea of want of moral accountability had been set up, justly observes: "Unless he be an idiot, every Deaf Mute who, after having committed a theft, is brought before the tribunals, knows that he has done wrong; and the advocate who is called on to defend him, places himself on a false ground, when, to obtain an acquittal, he sustains that, deprived of hearing and speech, his client is incapable of attaining moral ideas, and ought not, in consequence, to be responsible for his actions.

"If such a doctrine should come to be prevalent, and to be the foundation of our criminal jurisprudence, it might involve the most disastrous consequences for society. Men accustomed to crime would seek, perhaps, for accomplices among uneducated Mutes, and would find in them instruments so much the more docile, that they would be assured in advance of their impunity.

"If I had to defend a Deaf Mute before the courts, I would

carefully abstain from advancing a plea that, in order to save a guilty person, would slander the dignity of human nature, by pronouncing a sentence of incapacity against all the Deaf and Dumb who remain faithful to their duties. I would not fear to avow the fault of my client; but I would throw off the responsibility on society itself, which, by a cruel heedlessness, has left to vegetate in its bosom a whole class of its members, exposed without defence to every temptation of passion, to every solicitation of vice. Without doubt a Deaf Mute is culpable when he commits a bad action; but would it be just to treat him according to the rigor of the law? Can the axiom, *The law is held to be known to all*, be applied to a being who is absolutely incapable of knowing the law?"\*

We may add, that the Deaf and Dumb themselves, who must know what their own views and feelings were before instruction, warmly and indignantly reject and repudiate the plea of moral incapacity set up for their uneducated brethren. And we believe it has been generally abandoned. The more rational plea that makes the misfortune of the Deaf Mute criminal an extenuation of his fault, has, however, often been urged with deserved success. For instance, a Deaf Mute who was accused of grand larceny, with the aggravating circumstances of night, and breaking a lock, was, on account of his infirmity, found guilty of larceny simply, without mention of the aggravating circumstances, thus securing a much milder punishment.†

The favor of courts and juries may also be justly invoked for a Deaf person in cases where he has acted under erroneous impressions natural to one in his circumstances. Deaf Mutes and Deaf persons who are not quite dumb, are often suspicious and irritable, from their inability to hear and take part in what is going on around them. They sometimes take as intentional annoyance and insult gestures or practical jests, unskillfully made, which were merely intended as friendly pleasantry. Piroux records the case of Jean-Baptist Villemin, a Deaf Mute

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\* Piroux' Journal, i, 21, taken from *La Gazette des Tribunaux*, of 13th Dec. 1838.

† Piroux' Journal, ii, 151, case of Collett, who robbed another Deaf Mute. The defence was that Collett, who had received some education, might have the conscience of a bad action, but not of the aggravating circumstances.

of twenty-nine years, very imperfectly educated and of feeble capacity. Placed by the wealth of his family above the necessity of manual labor, and incapable of intellectual labor, he fell into dissolute habits, wandering idle about the fields, and frequenting public houses. One night, in a tavern, he met a man named Marchand, who attempted to amuse himself and the company by making signs to the Deaf Mute which the latter did not understand. Villemin indicated by a gesture that he desired to be let alone; but Marchand continued to annoy him, seizing his head and making a bite at his nose; and brandishing round his head a cane, which he then held in the attitude of firing a gun, saying to the company that he wished to invite Villemin to go a hunting. Villemin naturally lost his patience; unable to understand what was meant by the brutal behavior of Marchand, or to express his own sentiments, except by actions, he seized the aggressor, flung him on the floor, and gave him a kick on the head. Marchand was only slightly hurt. The company declared, and he admitted that he was himself to blame; and he said he harbored no ill will to Villemin, for what had passed. Returning home, a distance of several leagues on foot, he fell sick, and died of a disease of the chest, which his family chose to ascribe to the blows he had received from Villemin, which, however, was disproved by the medical witnesses. The Deaf Mute was in the first instance sentenced to two months' imprisonment; but on an appeal to the *Cour Royale* of Nancy, in consideration of the unfortunate condition of Villemin, and of the brutal and inconsiderate conduct of Marchand, the term was reduced to six days.\*

Other cases may easily be supposed in which a Deaf person may be led to violent conduct by his inability to hear, and to understand what is meant by others. An impatient man, for instance, requests a Deaf Mute to get out of his way, and not knowing that the latter could not hear his request, attempts to shove him aside, thus provoking a manual retort. A Deaf Mute may also erroneously conceive himself wronged in making change, or in price, weight or measure, and break out into violence. In such cases, we are confident, there are very few who

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\* Piroux' Journal, i, 46 and 59.

would undertake a prosecution for violence by a Deaf Mute, after becoming aware of his peculiar circumstances.

The disposition of courts and juries to mitigate the punishment of an uneducated Deaf Mute criminal has been shown in France and Germany, in several cases of murder, some of them of an aggravated character; for it is notorious that Deaf Mutes, who have grown to maturity without instruction, are too often passionate and vindictive. Bébien relates the case of Pierre Sauron, an uneducated Deaf Mute of the department of Cantal, who had formed an illicit connection with the daughter of a neighbor. The father, scandalized by such a connection with a dumb man, undertook to put a stop to it by sending his daughter out of the country. For this Sauron manifested the most implacable resentment, and finally waylaid and murdered him. The sentence was hard labor for life; for the like crime, one not deaf and dumb would have been sent to the guillotine. When the sentence was explained to the Deaf Mute, he declared he would rather be put to death.

Another case we find thus related in the Ninth Report of the Deaf and Dumb Institution of Hamburg (Germany.) At Cologne, on the 14th or 15th of August, 1829, the royal Court of Assizes was occupied by an accusation against a Deaf and Dumb journeyman shoemaker, Johann Schmit, of Kreuznach, who, enraged at being upbraided for the defects of his work, had stabbed his master with a knife. The principal question discussed was, whether the early instruction and moral and intellectual state of the Deaf Mute made for or against his accountability. The jury found that the unfortunate murderer was not accountable; and he was therefore acquitted of the charge, and dismissed free into the street. "This, (adds the editor of the Hamburg Report,) it is to be hoped, was not without that solicitude that might secure a better education to the unfortunate man, then twenty-three years old, and sufficient precautions lest he should become possessed with the idea that he could do such acts with impunity."

A much more aggravated case than either of the foregoing was that of Michael Boyer, an uneducated and vagabond Deaf Mute, of about 27 or 28 years, who was brought before the Court of Assizes of Cantal, (France,) under the triple charge of rape, murder and robbery, committed on a girl of eleven years, whom

he met in a lonely place on Christmas day, 1843, on her way to the residence of an aunt in a distant village, with whom she was to spend the winter, in order to attend school. Boyer was proved to have pursued other females with evident intentions of violence, and had been, some years before, condemned to three years' imprisonment for theft. The evidence, though circumstantial, was conclusive. It is not to our purpose to detail it. We observe, however, that the prisoner, being interrogated through M. Riviere, director of the school for the Deaf and Dumb at Rhodéz, denied energetically the principal facts imputed to him, and succeeded in making it understood that he maintained that the blood observed on his garments came from a wound in the head, occasioned by a fall while in liquor. What plea was by his counsel set up in defence, we are not informed. The jury found him guilty of the triple charge, but admitted extenuating circumstances—a verdict the effect of which was to save the prisoner's life. He was condemned to hard labor for life and to the *exposition publique* (pillory or stocks.)\* It should be observed, that the only extenuating circumstances that appear in the narrative of this fearful crime, were the total deprivation of instruction and neglected vagabond state of the criminal.

A similar verdict and sentence were given in the case of the Deaf Mute Emmanuéli, of Corsica, who had waylaid and murdered the two sisters Ristori, provoked to frenzy by the obstinate refusal of one of them to listen to his prolonged suit. He had, some years before, killed her brother in a quarrel on the same account, and it being considered that he had acted with great provocation, was only condemned to five years' imprisonment—a lenity which the commission of the second, and far more aggravated, murder showed to have been misplaced.†

The details of another French case of murder by an uneducated Mute, Louis Chavanon, may be read in Beck's Medical Jurisprudence. This Deaf Mute was of such a covetous and grasping disposition, that he harbored the most violent enmity against any who purchased property of his father. The deceased, Treille, having become possessed, by purchase, of half of the house in which Chavanon lived, the latter, after repeated menaces in gestures, meeting him on the common stairs, an affray

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\* Morel's *Annales*, ii. 166-170.

† Piroux' *Journal*, iv. 144.



ensued which ended in the death of the unfortunate Treille. The sentence was ten years' imprisonment, and a fine of 1,000 francs to the widow and children of Treille.

Another deplorable instance of the ungovernable passions of too many uneducated Mutes is furnished by the case of Pierre Lafond, who, having been repeatedly detected in thefts of the property of his uncle and aunt, by whom he had been adopted and brought up, his aunt was at length provoked to the degree of following and reproaching him in the presence of a young neighbor, of whom Lafond was enamored. Watching an opportunity to execute the vengeance that rankled in his heart, he availed himself of the absence of his uncle to attack his aunt at night in her bed with several of the shoe knives used by him in his trade. Her daughters, coming to her assistance, were also grievously wounded, but providentially none of the victims were mortally touched. Taken a day or two afterwards, wandering in the fields, Lafond alleged, by the aid of an interpreter conversant with his signs, that he committed the act under the influence of a sudden fright and hallucination. However, neither this adroit defence, nor his unfortunate position, could make the jury forget the aggravating circumstances of the case. He was found guilty, and condemned to ten years at hard labor.\*

The following curious and interesting trial is translated from Hitzig's *Zeitschrift für deutsche und ausländische Criminal Richts Pflege*. Berlin, 1828:

A young man, named Filleron, was brought before the Court of Assizes at Paris, in August, 1827, charged with housebreaking and petty theft. Deaf and dumb from his birth, he had never enjoyed the advantages of education, and had neither kindred, friends, nor any regular occupation. Abandoned by his parents, he was received into the Orphans' Asylum, and afterwards transferred to the Bicêtre, from which he ran away. Since that time, he has lived in Paris entirely isolated, without a home or any means of support, except what he received from some Deaf and Dumb persons. M. Paulmier, the successor of De l'Épée and Sicard in the direction of the Institution for the Deaf and Dumb at Paris, was employed as interpreter, and it was surprising with what ease he made himself understood by the prisoner, without

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\* Piroux' Journal, i. 56.



the assistance of the signs adopted in the Institution. He also understood and explained the meaning of the prisoner with great facility. Filleron entered the hall with a wrinkled brow and a vacant countenance, and having thrown a careless glance around the assembly, he remained motionless.

The President, with the assistance of M. Paulmier, asked him his name. This is the only word of which he knows the letters. He answered by signs that he was called Filleron, and signified, with his fingers, that he was nineteen years of age. The President desired that he might be asked where he was born. M. Paulmier, by motions and gestures, endeavored to convey to him the idea of a child in the cradle and at the breast. Filleron made signs that he had come from a great distance, and that his father was a mason; and raised and lowered his hands several times to imitate the motion of the waves. M. Paulmier explained his meaning to be that he was born on the sea-coast. M. Paulmier then enquired of him his place of abode, by laying his head on his hand as if asleep. For answer, Filleron scratched his hands, as if afflicted with a certain cutaneous disorder. By this, M. Paulmier understood him to mean that he lived in the Bicêtre. The bill of complaint was then read, which charged that Filleron, (after he had ran away from the Bicêtre, and had come to Paris,) by creeping under a door, and breaking a pane of glass, had effected an entrance into the Orphans' Asylum, in which he was educated, and had stolen the clothes of one of the young men; that three days after this, he again entered the Asylum, by jumping over the wall, and, after having eaten in the kitchen, had purloined a coal scuttle, three copper stew-pans and an apron. These articles were delivered by him to one Letertre, a well-known Deaf and Dumb cook, who invites customers by blowing a trumpet. Letertre had deposited the articles with a wine merchant, who, having his suspicions awakened, caused Filleron to be arrested. The President desired M. Paulmier to make Filleron understand that he was accused of the theft and house-breaking. M. Paulmier imitated the motions of a person who takes away a coat, and runs off; he then pointed his fingers to the accused, and then to the officers of the court. Filleron made a sign in the affirmative. M. Paulmier repeated his gestures, and at the same time imitated the movements of a cook, who shakes a stew-pan over the fire. Filleron signified, by lively

gestures, that he understood him; repeated the motions, and expressed with his fingers that he had stolen three stew-pans and a utensil managed with both hands. He was then asked how he effected an entrance into the Asylum. He now, by attitudes and motions, signified that he had crept under a door, broken a pane of glass with his knife, and, having passed through a long passage, got into the kitchen; that having eaten, he had taken three stew-pans from the nails on which they were hung, and, after wrapping them in a cloth, had made his escape.

*President.* "Ask him where he was educated?"

M. Paulmier lowered his hands, in order to convey the idea of a small child, and raised them gradually to represent its growth. Filleron placed his hand on the collar of his jacket, to signify that he was educated in the Orphans' Asylum, where the children wore grey jackets with red collars.

*President.* "He was sent away from the Asylum for bad conduct; ask him why he went away?"

Filleron answered this question, by signifying that he had assumed a sulky mien. He then scratched his hand, to express the idea that he had been sent to Bicêtre.

*President.* "Ask him if he has been employed as a tailor?"

M. Paulmier imitated the motion of a person who is sewing. Filleron made a sign in the negative, and folded his arms, in order to signify that he had no occupation. He then stretched them out, as if he were pushing violently; by this he intended to express the idea, that he had worked at a well, and turned the wheel.

*President.* "Ask him why he ran away a second time?"

Filleron expressed, by very intelligible signs, that he was tired and had been beaten. He then made a wry face, and turned his pocket wrong side outwards, to signify that he had not been well paid.

*President.* "How has he lived since he ran away from the Bicêtre?"

M. Paulmier drew a large circle, to represent the city of Paris, and imitated the motions of a man who is eating and sleeping. Filleron understood this at once, and placed himself in an attitude as if blowing a trumpet, and then pretended to eat, to signify that he had lived with Letertre.

*President.* "Ask him, whether, some days previous to his

arrest, he did not give five francs to one of the orphan boys, who was sweeping before the gate of the Orphans' Asylum.

M. Paulmier showed him five francs, and endeavored to convey to him the idea of a boy who is sweeping, to whom something is given. Filleron made a sign in the affirmative, and expressed, by signs, that he had obtained the money by working at the well.

*President.* "Ask him why he committed the theft?"

It was very difficult for M. Paulmier to make this understood. When Filleron, at last, comprehended his meaning, he expressed by signs, that he was large, subject to hunger and thirst, and that he must have a pinch of snuff.

*President.* "Ask him if he knows it is unlawful to steal."

M. Paulmier acted as if he would have Filleron take away his jacket, pointed to the gens-d'arms and the officers of the court, repeated the same signs pointing to himself, and then placed himself in a position as if he were seizing a thief, and binding his hands. To all this Filleron answered by imitating the motions of a man who acts eagerly to signify that he was forced by hunger to steal.

According to the statement of the Commissary of Police, before whom Filleron was first brought, when the stolen clothes he had on were taken from him, he evinced signs of the greatest despair, and attempted to seize the sabre of one of the gens-d'arms, and it became necessary to bind him. He then made signs as if in mockery, and as if he wished to throw himself into the water, or cut his throat. After this, he bent his head down and wept bitterly, and then remained motionless, and as if sunk in the deepest despondency.

To the question, whether he had broken into the Asylum, Filleron answered by signs that he had broken a pane of glass; but that it had been broken before, and he earnestly insisted on this last circumstance. When the stolen articles were shown to him, he recognized them as such, and made signs that he was hungry. M. Paulmier asked him if he was sorry. Filleron again expressed by signs that he was hungry and had nothing to eat; and then placed himself in an attitude, as if some one were pushing him and pointing out to him some object. M. Paulmier explained his meaning to be that he was instigated by some other Deaf and Dumb person to commit the theft. On motion

of the Advocate-General he was asked, whether he had not been already punished in the Asylum for theft. To this he answered by signs, that he was then very small, and that he was allowed but a very small portion of bread and was hungry. He then assumed the fixed posture of a soldier to signify that he had been punished in that manner.

*President.* "Asked him if he had any idea of religion."

M. Paulmier pointed to the heavens and placed himself in an attitude of supplication and struck himself on the breast, in sign of guilt. Filleron did not appear to understand him; but signified that it had been attempted to teach him to read and write. M. Magni, the Director of the Orphans' Asylum stated that he was convinced, that Filleron could not distinguish between good and evil.

The second witness was the Deaf and Dumb cook. He was a pupil of the Abbé de l'Épée, and could understand and make himself understood with greater facility. He appeared to be in high spirits, saluted the court with great civility, and at the order of M. Paulmier, raised his hand with a very significant expression, denoting that he would open his whole heart. An inarticulate sound, to which he gave utterance, resembled the French word *oui*. He expressed, by signs, the letters of his name, Antoine Alexandre Letertre, and that he was forty-seven years of age; he then placed himself in an attitude, as if he were blowing a trumpet, and laughed heartily. He expressed, by very intelligible signs, that he had taken the stolen articles, and that Filleron had informed him that he had received them for the purpose of getting them tinned over. He manifested great abhorrence, placed one hand on his heart, and covered his eyes with the other, and then pretended to push back the stew-pans that were lying on the table with violence, to signify that he did not know that they had been stolen. He then imitated the movements of a man, who is seized and bound to a post. M. Paulmier declared, that the honest Letertre well understood that theft was unlawful, and that its consequences were imprisonment and exposure in the pillory.

Here arose a very lively pantomime between Letertre and Filleron. M. Paulmier explained, that Letertre asserted, in contradiction of Filleron, that the latter had said, he had

received the stew-pans for the purpose of getting them tinned over.

*President.* "Ask the witness if Filleron has ever before delivered to him stolen goods." Letertre denied this, and made signs that he was honest, had a good heart, and pushed the stolen articles from him.

The other witnesses had nothing of importance to state.

The Advocate-General contended, that notwithstanding the compassion we may feel for the condition of the Deaf and Dumb, the law must take its course; that there were Deaf and Dumb persons, possessing intelligence and discernment; and that they were to be judged according to the measure of their understanding. In conclusion, he insisted that Filleron was capable of distinguishing between good and evil, that he had acted with intelligence, and must therefore be pronounced guilty. The counsel for the accused, in the defence, assumed the position, that a person Deaf and Dumb from his birth, who has never received any education, is not amenable to the law. In this condition, he cannot form any idea, for there is wanting to him *words*, the elements of all ideas. Even if, by a kind of inspiration and by observation, he has acquired a knowledge of the consequence of evil actions, still it would not be possible for him to choose, with a clear discrimination, between an action forced on him by a state of extreme necessity, like that of the prisoner, and a forbearance of that action for fear of its consequences. He has not that self control, that *freedom of will*, upon which all liability to punishment rests. His actions are not to be measured by the standard of morality. But suppose this position to be untenable, he is not subject to punishment, according to the well established rule of law, *lex non obligat nisi promulgata*. However great may be his inclination, he cannot obtain a knowledge of the law, and the Apostle Paul says, 'I had not known sin, but by the law; for I had not known lust except the law had said, "Thou shalt not covet."' Filleron has, indeed, seen punishments, executions, and gens-d'arms; but gens-d'arms are not the flesh become law. Were the seeing such objects as these sufficient to create a liability to punishment, a criminal code of laws would be useless, and it would only be necessary to ascertain whether the person accused has ever passed by a gallows.

Filleron was acquitted. He received an earnest admonition from M. Paulmier, which appeared to affect him.\*

In the several French cases that have been cited, (and we might have cited other similar cases from Bebian's, Piroux' and Morel's Journals,) no difficulty appears to have been experienced in relation to the formalities of a trial; the questions that were raised related to the degree of moral accountability of the Deaf and Dumb. But the few English and Scotch cases we have are mostly of a different character. In these cases, the defence set up for Deaf Mutes accused of crime, has generally turned on legal forms and technicalities. As this paper has already extended to an unexpected length, and as the cases to which we refer can be consulted at large in standard works, we shall restrict ourselves to brief outlines.

In July, 1817,† Jean Campbell, an uneducated Deaf and Dumb woman, the mother of three children by three different fathers, was charged before the Court of Justiciary in Edinburgh, with murdering her child by throwing it over the old bridge at Glasgow. Mr. Robert Kinniburgh, an eminent teacher of the Deaf and Dumb, was called in as an expert; and understood from her signs that she maintained that, having the child at her back, held up by her cloak, which she held across her breast with her hands, being partially intoxicated, she had loosened her hold to see to the safety of some money in her bosom, thus allowing the child to fall over the parapet of the bridge, against which she was resting. She indignantly denied having intended to throw it into the river.

"Mr. Kinniburgh being asked whether he thought she could understand the question, whether she was guilty or not of the crime of which she was accused? answered that in the way he put the question, asking her by signs whether she threw her child over the bridge or not? he thought she could plead not guilty by signs, and this is the only way in which he could so put the question to her, but that he had no idea, abstractly

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\* See American Jurist, vol. 3, p. 158.

† Beck gives this date, 1807, which is a manifest error, as Mr. Kinniburgh of the Edinburgh Institution for the Deaf and Dumb, which was first opened in 1810, was called in the case, and referred, in giving his evidence, to his Report for 1815.

speaking, that she knew what a trial was, but that she knew she was brought into court about her child."

"John Wood, Esquire, auditor of excise, (who is deaf and partially dumb,) gave in a written statement upon oath, mentioning that he had visited the prisoner in prison, and was of opinion that she was altogether incapable of pleading guilty or not guilty; that she stated the circumstances by signs, in the same manner she had done to the court, (when questioned before the court by Mr. Kinniburgh,) and seemed to be sensible that punishment would follow the commission of a crime."

"The court were unanimously of opinion that this novel and important question, of which no precedent appeared in the law of this country, (Scotland,) deserved grave consideration, and every information that the counsel on each side could procure and furnish."

"At a subsequent period, the judges delivered their opinion as follows:

"Lord Hermand was of opinion that the panel (prisoner) was not a fit object of trial. She was deaf and dumb from her infancy; had had no instruction whatever; was unable to give information to her counsel, to communicate the names of her exculpatory witnesses, if she had any, and was unable to plead to the indictment in any way whatever, except by certain signs, which he considered no pleading whatever."

The other four judges, however, overruled this opinion, referring especially to a case (already mentioned in a former part of this paper) that had occurred in England in 1773, in which one Jones, who had stolen five guineas, appearing to be deaf and dumb, and being found by the jury empaneled on that point, to be mute "from the visitation of God," was arraigned by the means of a woman accustomed to converse with him by signs, found guilty and transported. And it was also observed that it might be for the prisoner's own good to have a trial; for if the jury found that her declaration, that she did not intend to throw her child in the river, was true, she would be acquitted and set free; whereas, if not found capable of being tried for a crime, she must be confined for life. The woman Campbell was accordingly placed at the bar, and when the question was put, guilty or not? "her counsel, Mr. McNeil, rose, and stated that he could not allow his client to plead to the indictment, until it



was explained to her that she was at liberty to plead guilty or not. Upon it being found that this could not be done, the case was dropped, and she was dismissed from the bar *simpliciter*. Thus, though it is established that a Deaf Mute is *doli capax*, no means have yet been discovered of bringing him to trial."

Certainly the system of laws in Scotland must be defective, under which important leading cases are decided, not on broad general principles, but on mere formalities and technicalities.

We find an English case, similar in some of the circumstances to that just cited. In 1831, a woman (Esther Dyson) was indicted at the York Assizes (England) for the willful murder of her bastard child by cutting off its head. Upon an arraignment she stood mute; a jury was empaneled, and evidence being given that she had always been deaf and dumb, the jury found that she was mute by visitation of God. Mr. Justice Park then directed that an interpreter should be sworn to communicate with her by signs, which was done, and the interpreter explained to her by signs what she was charged with, and she made signs obviously imputing a denial, and which the interpreter explained to be a denial. Justice Park then directed a plea of not guilty to be recorded. The interpreter was then directed to explain to her that she was to be tried by a jury, and that she might object to any of the jurors if she pleased; but the interpreter, as well as another witness, stated that it was impossible to make her understand a matter of that nature, although upon common subjects of daily occurrence which she had been in the habit of seeing, she was sufficiently intelligent. One of the witnesses had instructed her in the dumb alphabet, but she was not so far advanced as to put words together, and the witness swore that though she was *then* incapable of understanding the nature of the proceeding against her and of making her defence, he had no doubt that with time and pains she might be taught to do so, by the means used by the instructors of the Deaf and Dumb. Justice Park then directed that a jury should be empaneled to try whether she was sane or not, which having been done, the same witnesses were then examined and testified to her incapacity at *that time* to understand the mode of her trial or to conduct her defence. Whereupon, the judge—after stating upon the authority of Sir Matthew Hale, that if a person of sound memory commits a capital offence, and afterwards at any

period becomes insane, that he cannot be proceeded against during the existence of his phrenzy, but must be kept in prison until his incapacity is removed; and that where the offence charged is either treason or murder, that the fact whether the alleged insanity is real or counterfeit is to be enquired into by a jury—told the jury that if they were satisfied that the woman had not then, from the defect of her faculties, intelligence enough to understand the nature of the proceedings against her, they ought to find her not sane. The jury found that she was not sane, and she was therefore ordered to be kept in strict custody until the king's pleasure should be known.\*

Five years afterwards, in March, 1836, a similar question came before Baron Alderson. A man was indicted for bestiality. Upon being put to the bar, he appeared to be deaf and dumb, whereupon a jury was empaneled, who found he was mute by visitation of God. As the prisoner was able to read and write, the indictment was handed to him which he read, and made a sign that he was not guilty. Upon this the jury found that he was able to plead, and that point having been determined, the next question submitted to the jury was, whether he was then sane, and could be put upon his trial for the offence. On the part of the crown, evidence was given with a view of showing that, on the examination before the magistrate, he had understood the charge, and had answered in writing. But several witnesses swore that he was nearly an idiot, and had no proper understanding; and that though he might be made to comprehend some matters, yet he could not understand the proceedings upon the trial. In submitting the case to the jury, Baron Alderson said that the question was, whether the prisoner had sufficient understanding to comprehend the nature of the trial, so as to make a proper defence to the charge, and that *three* points were to be enquired into. *First*,—Whether the person was mute of malice or not. *Second*,—Whether he can plead to the indictment or not. *Thirdly*,—Whether he is of sufficient intellect to comprehend the course of proceedings on the trial so as to make a proper defence—to know that he might challenge any of the jurors to whom he might object, and to comprehend the details of the evidence, which, in a case

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\* *Rez v. Dyson*, 7 Car. and Pay. 305.

of this nature, must constitute a minute investigation. That if they thought that there was no certain mode of communicating the details of the trial to the prisoner, so that he could clearly understand them, and be able properly to make his defence to the charge, that they ought to find that he was not of sane mind. That it was not enough that he might have a general capacity of communicating on ordinary matters. The jury found that the prisoner was not capable of taking his trial, whereupon the Court directed that he be confined in prison during the king's pleasure. This case, it appears, was considered by several of the judges, and the course pursued by Baron Alderson was approved.\*

These two cases suggest the question, whether the law ought not to recognize and make provision for that intermediate state between full accountability and total want of capacity to commit crime, which cases, like that of Esther Dyson, strikingly evince.

If her case had been brought before a French tribunal, instead of staying proceedings on a point of form, thus condemning to an indefinite term of imprisonment one who might after all be innocent, the trial would have proceeded; and it would have been for the jury whether to acquit her either as innocent in fact, or not accountable; or to find her guilty, with extenuating circumstances. In the latter case her punishment would hardly be more severe than the imprisonment, perhaps perpetual, inflicted on Esther Dyson without trial.

We recollect a case that was tried in Essex county, New Jersey, about twenty years since, in which a man evidently deaf, and pretending to be dumb also, was tried and convicted of sodomy. Doubts were expressed whether the prisoner was both deaf and dumb, because specimens of his writing, exhibited to the court, showed a much better acquaintance with the sounds than with the orthography of words. There appears, however, from what we recollect of the case, no reason to doubt that he was deaf, the most decisive test being that the sentence of several years' imprisonment at hard labor, though pronounced in a loud voice, produced no effect on him; but when it was communicated in writing, he showed evident signs of being strongly affected. As he was able to read and write, his examination

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\* *Rex v. Pritchard*, 7 Car. and Pay. 304.

was at first in writing; but, at a later stage of the proceedings, a Deaf-Mute interpreter was procured. He was a wanderer from abroad, whose previous history was known only from his own account, and had probably lost his hearing after learning to read and write. He appears to have prejudiced his own cause by pretending to be both deaf and dumb; since the suspicion thrown on the latter point by the test that he knew words by their sounds, rather than by their orthography, caused it to be supposed that his deafness also was simulated to excite compassion. We mention this case, (of which we have no legal record,) for the sake of observing that, in cases where a person pretends to be deaf and dumb, and to have been taught to read and write in the mode in which Deaf Mutes usually are taught, the best test for detecting him, (next of course to proving directly his ability to hear and speak,) is by observing whether in writing he shows an acquaintance with the sound rather than with the orthography of words. The compositions of Deaf Mutes are often disconnected, erroneous in syntax, or obscure or improper in expression; but they are not very apt to make blunders in orthography.\* A man who writes idiomatic English, even of the homeliest kind, with an orthography governed by the sound of the words, (e. g. *I du not no*,) cannot be a Deaf Mute, though he may perhaps be deaf from childhood.

From the facts and reasonings presented in the course of this paper, we deduce the following general principles, for which we have obtained the sanction of some eminent members of the legal profession, and which are respectfully submitted, as being consonant to reason, and hence to law, according to the famous dictum that law is the perfection of reason.

As a knowledge of words is not necessary to moral and mental development, a Deaf Mute who cannot read or write is not *necessarily* more ignorant in matters that can fall under his personal observation, or that form the usual topics of conversation in signs between him and his acquaintances, than illiterate

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\* And when Deaf Mutes do make blunders in orthography, they consist in omitting or transposing letters; not in spelling words according to their sound, or substituting one word for another of like sound, unless so taught by ignorant associates.

persons who are not deaf and dumb. Hence a Deaf Mute who has no knowledge whatever of written language, may yet, if his dialect of gestures is sufficiently copious and precise, possess the intelligence necessary to manage his own affairs, to make all civil contracts, to execute a deed or a will, or to give evidence in a court of justice, proper precautions being taken that the interpreters, who accompany him before the attesting notary or magistrate, are faithful, competent and disinterested.

But as the degree of intelligence and of moral development in uneducated Deaf Mutes is very various—some who have been neglected in infancy being but a step above idiots—they should be carefully examined to ascertain whether they really possess the necessary degree of knowledge and intelligent will. And where any doubt may exist, it is advisable that teachers of the Deaf and Dumb should be called in, as being more able to appreciate such cases than any other persons, and usually more expert in conveying ideas by pantomime than even the friends of an uneducated Mute usually are.\*

Cases however, as we have seen, occur in which the Deaf Mute has formed with some intimate companion a peculiar dialect, not to be understood by others. Here some person who is conversant with the dialect used by the Deaf Mute will be the best interpreter. This is more especially the case with those

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\* The late excellent T. H. Gallaudet, in an article in the *American Annals of the Deaf and Dumb*, "On the Natural Language of Signs," (vol. i, p. 57,) states the following fact: "The writer of this article, some years ago, was requested, with a fellow laborer of his, at the time, in the American Asylum, to visit a Deaf Mute in a neighboring town, about eighty years of age, possessed of some property, and desirous of making a will. He could not read, nor write, nor use the manual alphabet. He had no way of communicating his ideas but by natural signs. By means of such signs, exhibiting a good deal of ingenuity on the part of the old man, myself and companion were able to understand definitely the disposition which he wished to make of his property among his relatives and friends, and thus to enable him to carry his views into effect under the sanction of the law."

In cases of a criminal charge, the nearest friends of the Deaf Mute accused would hardly be reliable interpreters. In England, some years ago, a Deaf Mute, named Howitt, was charged with murder. His father attended his examination as interpreter, but the coroner's jury, thinking he did not interpret some very expressive gestures of the Deaf Mute, adjourned to procure a more disinterested interpreter. *Piroux' Journal*, v, 18.

Deaf Mutes who retain an imperfect remnant of speech, and endeavor to understand what is said to them by the motions of the lips, aided by peculiar grimaces.

With respect to the formalities used, it may be laid down as a general rule, that the Deaf Mute who can read and write but imperfectly, or not at all, should be regarded as in the position of a German or Frenchman, whose ignorance of our language necessitates the employment of a sworn interpreter between him and the court.

But where the Deaf Mute can read and write well, the best mode is that prescribed in the French code. In the case of such, reading supplies hearing, and writing supplies speech. Hence it follows that a paper presented to a well-instructed Deaf person, calling his attention by pointing with the finger to the writing, should be considered as read to him, (it being understood of course that there should be sufficient light and sufficient legibility of writing). We think, however, it ought to be specially enacted that a legal service in the case of *such* persons should consist in giving them a copy of the writ or notice to be served, informing them by writing of its nature or contents, and in the case of Deaf Mutes who cannot read, or but imperfectly, the reading may be accomplished by the aid of a competent interpreter. Any legal oath or obligation may be taken or assumed by a well instructed Deaf person, by writing out with his own hand the formula before witnesses, with such forms of solemnity as the occasion may demand; or by a conversation in writing with the officiating magistrate.

It should, however, be generally understood, that many of the Deaf and Dumb who have received more or less instruction in our schools, are still but imperfectly acquainted with written language, and that signs are the surest and readiest means of reaching their conscience and intelligence—the surest means also that they possess for explaining their own meaning clearly.

With respect to civil rights, the Deaf Mute possesses all the rights of his fellow-citizens, whose situation, Deaf-Mutism aside, is the same as his own. Imbecility, insanity, and, in some cases even, extreme ignorance may disqualify him from making contracts, and necessitate the appointment of guardians—but not mere inability to write and read, if he evinces, by means of signs, the requisite intelligence.

And before the criminal, as well as before the civil law, the Deaf Mute has the same rights, and is subject to the same accountability as his brother who hears and speaks. We trust no attempts will be made by unscrupulous pleaders, or, if made, will be successful, to deprive him of the right to bear witness against those who have wronged him; and, on the other hand, while we ardently desire to see all the Deaf and Dumb reach that degree of moral improvement which shall preserve them from crime, yet, when they do come before the criminal tribunals, we do not wish to see them screened from deserved punishment by mere technicalities, or by arguments of want of moral accountability in the Deaf and Dumb generally. The ignorance and neglected condition of an uneducated Deaf Mute may, however, be justly urged in extenuation of his faults, as an appeal to the compassion of the court, or of the pardoning power. And cases may occur in which a Deaf person has acted under erroneous impressions, natural in his circumstances; as, for instance, in resisting legal process, believing it to be unlawful violence. In such cases there is evidently no more accountability than in cases of hallucination.

And as it is of great importance to every man whose interests, liberty or life are at stake in a court of law, to know, as they transpire, the proceedings and evidence against him, we think it ought to be made a rule, that in all such cases an interpreter should be assigned to the Deaf Mute, who will keep him advised of at least all the important points in the proceedings, by writing, or by the manual alphabet and signs, according as the one mode or the other is more clearly intelligible to the prisoner.

All which is respectfully submitted.

HARVEY P. PEET,  
COLLINS STONE,

*Committee.*

NEW YORK, August, 1856.

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#### NOTE.

We have not discussed, in the foregoing paper, the right of a Deaf Mute to vote, when otherwise legally qualified, because we had not met any case in which that right was contested or denied, (if the French case, in which the Deaf Mute was judged incapable of understanding



the electoral oath, be excepted,) till after this report was written. Very recently we have met with a paragraph in Smith's History of New York, (edition in the collections of the New York Historical Society, vol. ii, p. 293.) Of several points "resolved by the Assembly in the exercise of their judicial authority, respecting the qualifications of their own members" on occasion of contested elections, in 1761, the last was:

"5. That a man deaf and dumb from his nativity has no vote."

On this case we make two observations. First, that as a property (we think a freehold) qualification was then required for voters, the Deaf Mute (for evidently the resolution refers to a vote actually received or offered) was possessed of property, probably by inheritance, showing that, at that time, Deaf Mutes were practically considered incapable of possessing property; and second, that under a system of *viva voce* voting, which, if we mistake not, then prevailed in the Colony, as it still does in England, it would be hardly possible for an uneducated Deaf Mute to give his vote, since he could name his candidate neither by speech nor writing. If his intelligence was such that he ought to be admitted to vote, some special statutory provision would be necessary in his case, under a system of *viva voce* voting. Where the voting is by ballot, however, no such special provision is necessary.

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After reading a large portion of the report,

Dr. PEET said: I submit if it would not be taxing the Convention too much to read this report through, and whether the balance of it could not be read at another time.

Mr. COOKE. I move that the further reading of the report be suspended for the present.

The motion was agreed to.

Mr. COOKE, from the Committee to report Proper Persons to take seats in the Convention, submitted the following report:

"The committee appointed to report proper persons to sit in this Convention, recommend that teachers of the Blind, principals and teachers of schools, academies and colleges, graduates of this and other similar Institutions, their parents and guardians, clergymen, physicians, lawyers, editors, and the Board of Directors and Officers of the Western Lunatic Asylum, be invited to take seats in the Convention as honorary members."

The report was agreed to.

Mr. MACINTIRE called for the report of the Committee on Credentials; whereupon,

Mr. GILLET, from that Committee, read the following list of delegates who were in attendance:

AMERICAN ASYLUM AT HARTFORD.—Laurent Clere, Samuel Porter, Rev. John R. Keep, Edward M. Gallaudet.

NEW YORK INSTITUTION.—Harvey P. Peet, LL. D., President; Oran W. Morris.

PENNSYLVANIA INSTITUTION.—Thomas Jefferson Trist.

VIRGINIA INSTITUTION.—Dr. J. C. M. Merillat, Principal; John C. Covell, Vice Principal; Samuel F. Fink, Job Turner, W. C. Graham, Holdridge Chidester; and James H. Skinner, President, George Baylor, W. H. Harman, N. C. Kinney, Secretary, W. H. Symes, of the Board of Visitors.

NORTH CAROLINA INSTITUTION.—Wm. D. Cooke, Principal; Dr. James A. Waddell, Mary St. C. Cooke, Maria E. Cooke, Charles M. Grow.

SOUTH CAROLINA.—Rev. N. Pinckney Walker, Principal.

OHIO INSTITUTION.—Rev. Collins Stone, Superintendent; Wm. E. Tyler, John M. Francis, Benjamin Talbot.

INDIANA INSTITUTION.—Thomas MacIntire, Superintendent.

ILLINOIS INSTITUTION.—Philip G. Gillet, Principal; Samuel F. Dunlap.

The report was agreed to.

The next report in order being the report of the Committee on a Syllabic Alphabet—

Dr. PEET said, that an experiment was made in one of the classes of the New York Institution, with a view to satisfy the committee as to the practicability of inventing an alphabet, which would expedite dactylology, by enabling the speller to make three or four letters at once, presenting words in syllables, all the letters of which are made simultaneously. But though the acquisition of the elements or individual letters was found to be easy, it was found very difficult to acquire such a readiness in spelling and reading by this mode as would admit of the new alphabet being used even with as much rapidity as the old one in a continuous discourse. The pupils preferred their old alphabet to undergoing the labor of familiarizing themselves with the new one. The impression of the teacher in whose class the experi-

ment was made, was, that to acquire the readiness and facility in the use of the new alphabet which its theory pre-supposes ere it can be of practical use, would exact an expenditure of time and labor disproportionate to the benefit to be realized. In some words, indeed, especially in the class of monosyllables, the experiment showed that it would be very easy by such an alphabet to present all the letters of a word at once; *e. g.* the word *cat* would be very neatly and expeditiously presented by making the *c* with the right hand, the *t* with the left, and indicating the *a* by the mode of joining the hands; but in the majority of words, it would be difficult and perplexing. The Deaf and Dumb knowing nothing of syllables, cannot divide words into syllables; hence the teacher must make that division for them separately for each word before they can use a syllabic alphabet; and in the case of a majority of the words found in books, the syllables are so short, (*e. g.* *individual* is a word of five syllables and only ten letters,) that the benefit from a syllabic alphabet, as regards such words, would hardly be a compensation for its inconveniences. As a matter of fancy it may do very well; and if two or more persons will devote the time necessary to acquire a thorough familiarity with the positions of the fingers and hands described by the inventor,\* they can no doubt become able to converse more rapidly, especially if they adopt among themselves a plan of abbreviation, presenting many of the most frequently occurring words by a single though complicated movement or position of the hands and fingers. The case is similar to that of the numerous systems of short-hand writing which have been taught by itinerant professors all over the country. Any bright young man can readily learn the alphabet, but very few ever persevere so far as to become able to write in short-hand even as fast as by the ordinary mode, and then read their own writing near as readily as they could ordinary writing. Yet, by adopting stenographic characters for frequently occurring words, any man can greatly expedite his attempts at reporting a speech or debate. The result of the experiment made was, that while it may be practicable for two persons of quick observation to learn to converse in this mode with greater rapidity than by the alphabet

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\* See American Annals, vol. iii, p. 217, and on.

now in use, it would be more difficult and perplexing for new pupils than the old alphabet, from the necessity of dividing words in a manner that will seem to them arbitrary, and from the fact also that it is in many cases difficult so to arrange the letters of a syllable by this mode that they shall be all clearly legible, especially to a whole class, some of the combinations being hardly visible to a side view. The committee, therefore, while admitting the ingenuity of the proposed system, and that it might be useful in certain circumstances, could not recommend that it should be adopted in the classes of an institution as a substitute for the alphabet now in use. I would move that the committee on that subject be discharged from its further consideration.

The motion was agreed to.

DR. PEET. There was another subject referred to that committee; but that was disposed of, I believe, at the last Convention in Ohio. It was something proposed by Dr. Thompson to change the mode of the present manual alphabet; if I understood and recollect aright, the letters were written on the joints of the fingers and different parts of the hand, to be indicated by pointing to them, or to the place assigned to them. If the hand could afford a field large enough to write a number of commonly occurring syllables, so that the place of each could be pointed to without hesitation, or time spent in search, there might be time gained by this method. But I apprehend such a plan is impracticable from the time that would be lost in searching for a syllable, if the number written on the hand is large, and if the number is small there would be no advantage to compensate for the trouble. If merely letters and not syllables are to be pointed to, there would be no advantage whatever; indeed the common manual alphabet would be preferable both in point of convenience and expedition. A French amateur proposed a similar plan, and urged as a reason for its adoption that by writing the letters on a glove, any person unacquainted with the manual alphabet would be enabled to converse with a Deaf Mute; but I do not see what advantage this mode would possess over writing. If the person could spell and not write legibly, he could just as well use an alphabet printed on a card, pointing to the letters that spell the word he wishes to communicate. The committee to whom Dr. Thompson's plan was referred, reported that the mover was entitled to respect and consideration for his ingenuity,

but that there was no possibility that any good result would be likely to be realized from it. I suppose it was referred, out of regard for the feelings of the mover, to a committee, but it being ascertained that no good would be accomplished, they did not consider the subject.

I move that the committee entrusted with this subject, be also discharged from the further consideration of it—that is the subject of the New Manual Alphabet.

The motion was agreed to.

Mr. PORTER, from the Committee on the Mortality of the Deaf and Dumb, the report of that committee being next in order, said, that the committee have not prosecuted the inquiry, because the materials were so scanty that no conclusion of any value could be arrived at. The question referred to the committee, was in relation to the causes of the supposed greater mortality among females than among males, in our institutions for the Deaf and Dumb. I do not know whether a thorough inquiry would show that this preponderance exists in fact or not. But however this may be, the whole number is so small as to afford no adequate data on which to found any general conclusions or make any legitimate inductions.

I therefore move that the committee be discharged from the further consideration of the subject.

The motion was agreed to.

The next report in order was that of the Committee on the subject of Trades taught at the different Institutions in the United States, their advantages and disadvantages, their fewness of variety, and their influences upon the pupils.

Dr. PEET. I regard that as a subject which ought to receive consideration. One member of the committee is now deceased, and the other members are not prepared to report on the subject. I think it would be well to supply the vacancy in the committee, created by the death of Mr. RAE.

Mr. STONE. It was my intention to have submitted to the Convention a written report upon this subject, but circumstances beyond my control have prevented its completion. I concur in the suggestion of Dr. Peet, that it is desirable to add another member to the committee.

Dr. PEET. I thought it was another committee. I forgot that the gentleman, (Mr. Stone,) was on that committee.

The question on giving further time to the committee to prepare their report, was put and carried.

On motion of Dr. PEET, the vacancy created in the Committee on Trades, &c., by the demise of Mr. RAE, was ordered to be filled up by the President.

The next subject to be reported upon, was "The Establishment of a Depository of Works on 'Deaf Mute Education.'"

Dr. PEET. The committee are not prepared to make any report on that subject.

As a member of that committee, I have myself entertained the belief, that the best locality for such a depository would be the city of New York. I have conferred with several book-sellers in reference to this matter, and some of them expressed, not only a willingness, but a desire that their establishments should be recognized as the place where books of this description should be kept. Mr. D. Van Nostrand is one of the number who expressed this wish, and probably the most acceptable. But I do not suppose it would be practicable to induce any book-seller to import the books embraced in the list which treat on the subject of the Deaf and Dumb, without there being some engagement that they would be sold. The Messrs. Guyot, at the head of the Institution for the Deaf and Dumb in Gottingen, Holland, have published a catalogue of these books, which comprises a volume of three or four hundred pages, and such books as are contained in that list, Mr. Van Nostrand is willing to import, and will execute any order in that line which any individual connected with any of the Institutions of the country, shall see fit to propose to him. This is the result of the conversation which, as an individual member of the committee, I have had with him. This would certainly be beneficial to persons connected with the Institutions, who might wish to obtain books from abroad. Most of the books in Guyot's catalogue, being long since out of press, are seldom to be found in the market. They are only to be found in private libraries generally. There are some gentlemen employed in London to get all the old volumes which are to be found. The Appletons are generally employed in that business. I have a copy of the catalogue made out by Guyot, which I proposed to Mr. Van Nostrand to put into his hands if he would import some of them, if ordered. I throw out this to show what I have done, as an individual, for the information of the Convention.

Mr. STONE. The method proposed by Dr. Peet is probably the best practicable one that can be devised to secure the object contemplated. We need information as to what books have been published bearing upon our profession. This we obtain from the valuable catalogue of the Messrs. Guyot. We need, in addition to this, facilities for procuring such of these books as we wish to place in our libraries. A depository in this country where all, or the most important, of these works could be found, would be exceedingly convenient. From the very limited demand for works of this class, however, such an arrangement is doubtless impracticable, as the greater portion of these books would not be imported by any bookseller, without a definite order.

Mr. KEEP. It is much to be regretted that some arrangement was not made to purchase the library of Mr. Gallaudet when offered for sale. But this was not done, and many of the books went into private hands.

Mr. GILLET. I have often thought that one of the greatest desiderata of our profession is, the absence of a literature peculiarly its own. In this respect, we stand alone among the elevated professions of the age. And while we are denied to gather around us large libraries, containing the experience and deductions of a long line of predecessors, is it not, Mr. President, our serious, our responsible duty, to rescue from oblivion the few works now extant that are of essential importance to the true dignity of our profession? Is it not incumbent on the teachers of the Deaf and Dumb of to-day to establish a literature peculiarly their own, which succeeding teachers shall find measurably, if not greatly, removing for them obstacles, which every member of this Convention has encountered? Looking over this Convention, though it is not a large one, I see that, among the men who have been long devoted to the welfare of the Deaf and Dumb, there is an amount of talent fully competent to accomplish this end. Though we, who are yet novices in this mystic art, may not aspire to an undertaking so dignified, yet our interest in it is none the less. The plan suggested by the President of the New York Institution all certainly appreciate; and, for one, I most heartily approve, so far as it is practicable. I, however, fear that works of merit, in relation to the Deaf and Dumb, are so rare, that not one-tenth of the copies desired could be procured. Let this depository be where it may—and I think, as



suggested by Dr. Peet, that it should be in New York—it will be out of reach of far the greater part of the members of this Convention. Accordingly, I would suggest, that when rare works of merit upon these subjects are procured, that copious extracts from them be published in the American Annals, and thus the benefit of them may at once be extended to the profession at large, and a new interest added to the Annals.

The Committee on the subject of a Depository for Books was continued.

Mr. MACINTIRE. I move the suspension of the regular order of business, with a view to enable me to offer a resolution.

The motion was agreed to; whereupon, he offered the following resolution:

*Resolved*, That a Committee of one Delegate from each Institution represented in this Convention, be appointed to consider and report at their earliest convenience a plan for the future publication and support of the American Annals of the Deaf and Dumb.

The resolution was adopted, and the following committee appointed to consider the subject:

Messrs. MacIntire, Peet, Keep, Stone, Trist, Gillet, Cooke, and Covell.

On motion of Mr. COVELL,

The Convention took a recess until four o'clock, P. M.

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### EVENING SESSION.

The Convention re-assembled at the appointed hour.

Mr. PORTER. I have in my hand a communication which I desire to lay before the Convention. It relates to a subject already referred to a committee, viz: that of the American Annals. This communication is from Mr. Thomas Brown, President of an Association of Deaf Mutes, called the New England Gallaudet Association:

*West Henniker, August 8, 1856.*

SAMUEL PORTER, Esq.

Dear Sir,—I thank you much for your kind letter of the 30th ult., which was duly received last Monday. After a few hours,

I mailed a letter to Mr. Turner, with respect to making the American Annals a medium for Deaf Mutes, without any proposal to be submitted to the Convention of Teachers, referred to in your letter. Though Mr. Turner might show you my letter, I think I should write you more; and through you, as I am strongly interested in the welfare of our N. E. Gallaudet Association, submit the subject to your Convention for consideration and acceptance.

We feel anxious to accommodate subscribers to the N. E. Gallaudet Association with some periodical. You know our Society commenced recently, and its fund is consequently not sufficient to support our own periodical at present. We think, if a consent from your Convention, that is familiar with the pantomimical manner, should be successful, we would want to put in the Annals for publication two times a year, (say January and July,) at the first year at some reduced price, to be paid from the fund of the N. E. Gallaudet Association, according to the number of subscribers. We think there may have been more than the present number at our Convention. We shall wish, with some proper condition, that a communication, composition and story, written by any of us, should be received and published. The editor can correct them as far as he thinks it necessary. We think it would be a prudent and economical step at present. I shall be much obliged for your early information about the action of your Convention on the desired subject, that I shall submit it to our Society for approval at our Convention.

It would give us pleasure to see you and other Teachers present at our First Convention, and enjoy address or lectures from you, &c.

The whole object that I have attended in concord towards our proposed meeting seems to prove a general satisfaction.

May Divine wisdom bless the efforts of your Convention with such success as to be useful to our Mute community.

Thinking the report of the N. E. Gallaudet Association would be acceptable to you, I shall send you one that may be handed to some one present, if you had one previously.

Please present my best regards to those present who know me, and best wishes for their happiness and prosperity in their useful cause, &c.

Sir,—I cannot refrain from saying that I feel anxious and de-

sirous to do all I can afford to aid in promoting the welfare of our Mute community. May God speed the good fruit of our Society.

I am, with best regards, your obedient servant,

THOS. BROWN.

On motion of Dr. PEET, the letter was referred to the Committee on the Annals.

Dr. PEET. Understanding that there is other business of importance which it is necessary to dispose of immediately, I move that my report be considered as on the table still. Agreed to.

Mr. STONE moved that the Committee on Grammatical Symbols, appointed at the Third Convention, be continued. The motion was agreed to.

Mr. STONE then moved that Mr. KEEP'S paper, on "The Mode of Learning the Sign Language," be read; whereupon,

Mr. KEEP read the following paper:

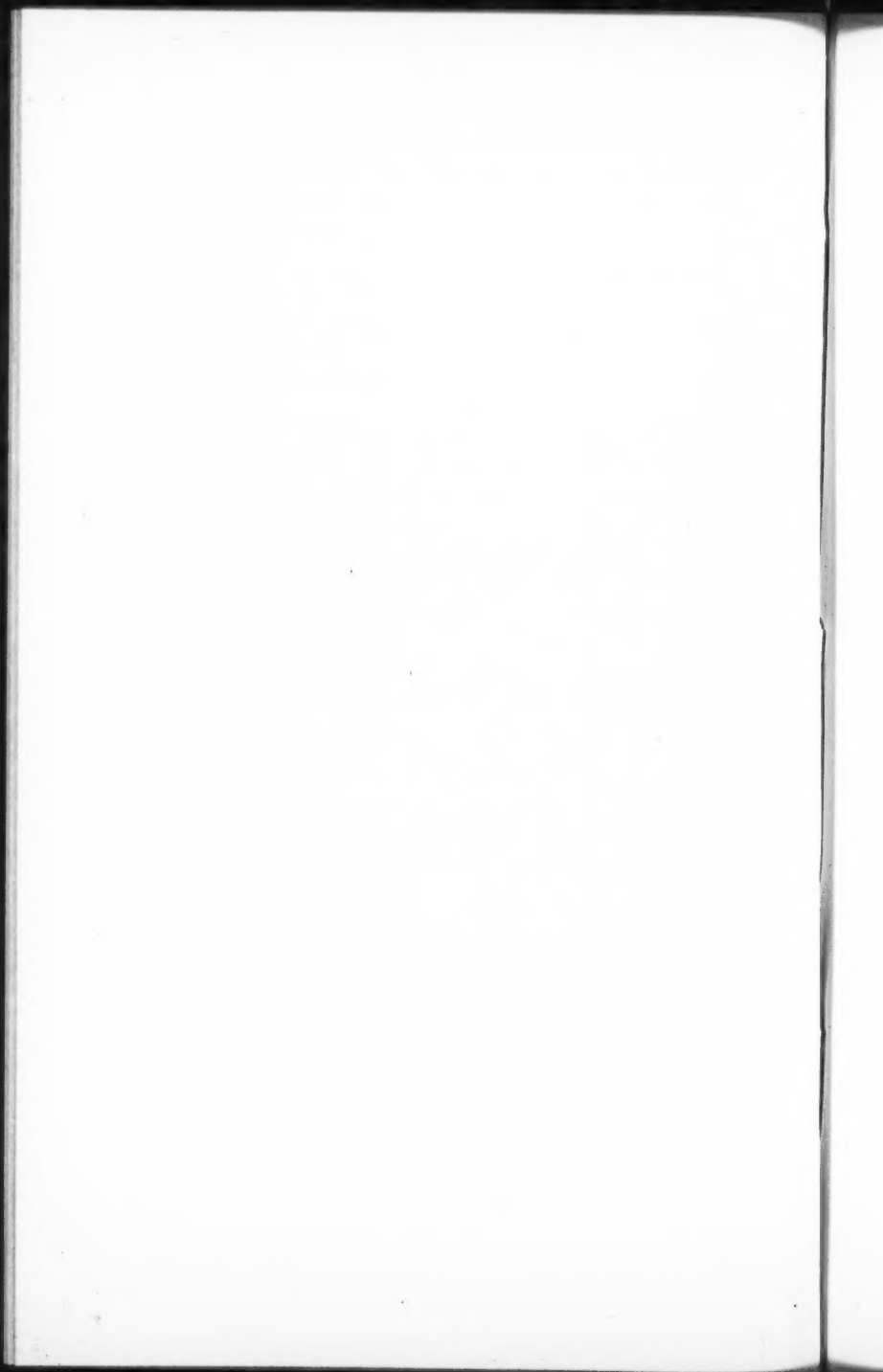
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THE MODE OF LEARNING  
THE  
SIGN LANGUAGE.

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BY REV. JOHN R. KEEP.

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## THE MODE OF LEARNING THE SIGN LANGUAGE.

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BY REV. JOHN R. KEEP.

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### *How shall Teachers of the Deaf and Dumb acquire a Knowledge of the Sign Language?*

It is answered in this inquiry, that there *is* a language of signs; a language having its own peculiar laws, and, like other language, natural or native to those who know no other. The great principle of this language is, that as sight, feeling, taste and smell are the senses through which a knowledge of the qualities of objects has been acquired, so it must be by some delineation of their form, some imitation of their motions, some reference to their feeling, odor, taste or color, that any one of these objects can be recalled to the mind. These delineations or modes of recalling the object may be very different, and yet the language be the same; thus, the picture of an ear may recall the idea of a horse, or the picture of a foot may do it equally well. There may be different signs or motions for the same objects, yet all are intelligible and legitimate, provided they serve to recall those objects to the mind of the person with whom we are communicating. As a matter of fact, however, although the Deaf and Dumb, when they come to our public institutions, use signs differing in many respects from those in use in the Institutions, yet they soon drop their peculiarities, and we have the spectacle of an entire community recalling objects by the same motions. So also in regard to human employments and labors, we recall them by some mimic representation or repetition of them.

But when we come within the spiritual domain, the process is of necessity somewhat altered. The aim, however, is still to select such signs as, by association or by some figure, will bring up the idea we wish. Some of these signs are obvious, others need explanation, and all of them must be made thoroughly

familiar, both in their meaning and use, before the language can be said to be mastered.

The teacher of the Deaf and Dumb, then, must know how to make signs—he must know their meaning—if they are not in themselves obvious, he must know why they were adopted to represent the ideas which they do, and in addition to this, he must be familiar with the syntax of signs, or with the true mode of combining and arranging them in connected discourse. Some important helps to the accomplishment of these ends I will now mention.

First, a *clavis* or key of signs would be of immense value in introducing the teacher of the Deaf and Dumb to a knowledge of signs. In such a list or *vocabulary*, the idea of the sign should be expressed by some word or words nearest to it in meaning, as also all those related or figurative words which it is used to express—as for example, bound, busy, habit—then the mode of making the sign should be clearly described, and lastly, the reason or ground of it should be explained. Thus, impossible or impossibility is represented in signs by placing the fore-finger of the right hand upon the fore-finger of the left and sliding it several times off the end. The reason of this sign lies in this, that the fingers placed in this position, and force or weight applied, one *cannot hang* upon the other. In order to show the sign properly, the finger of the left hand should be inclined downwards. Envy is represented by biting the finger and casting an evil eye upon the person envied. The reason of this sign I have not been able to ascertain. That a list of this character, embracing all signs not in themselves obvious, ought to be in the hands of one who is engaged in the work of learning the language of signs, must, I think, be apparent. It could at any time be referred to, and thus the memory be refreshed when no one was by to give a living explanation. The reason of the sign being given, the memory would the more readily retain it. And the mode of making the sign being accurately described, it would thus be saved from deterioration through the ignorance or forgetfulness of those who should come after. It is certainly a matter of surprise, that such an introduction or key to signs has not ere this been prepared by some one of the first generation of teachers who are so abundantly qualified for the work. If the treatise of Sicard on the theory of signs is adapted to meet this want, it



ought certainly to be translated and placed in the hands of American instructors.

The next thing to be recommended to the teacher who is learning signs, is a constant intercourse with the Deaf and Dumb, seeing them converse and conversing with them. By this means he is placed, it would seem, upon the same footing with those who go to a foreign country and acquire a new language by mingling with the people who speak it. There is, however, this difference: the pupils of our Deaf and Dumb Institutions, whatever be their age, are children, and, like all children, have many vague and confused ideas, and consequently their signs might be expected to partake more or less of this character. Such is the fact. The Deaf and Dumb pupils, as a body, make signs very indistinctly and imperfectly. They are thus both bad models for imitation, and often quite unintelligible. The teacher who would learn signs correctly should attend the chapel or other public exercises conducted by the Principal. Particularly valuable will be found the lectures upon the Sabbath. As the main thoughts of the lecture are written upon the slate, the learner of signs has the great advantage of knowing beforehand the idea which is to be expressed, and then of seeing the manner in which it is expressed.

But the mere passive spectator will never attain a mastery of the sign language. He must not only see signs used, and used correctly, but he must use them himself. The sooner, therefore, and the oftener the new teacher is put to the work of lecturing or of communicating his thoughts in extended discourse, the sooner will he become proficient in the language.

Finally, there is need of stated and particular instruction from the Principals of our Institutions. Instruction not at unseasonable hours, either before or after school, but at times set apart for the purpose, when the teachers are entirely free from other cares and labors. But where should these instructions begin? Not obviously with grammatical or mere technical signs, which can only be fully apprehended or appreciated when the language itself has been acquired, not with those petrified signs which have originated from the contact of signs with verbal and spoken language. It is not the application of signs to the explanation of the meaning of particular words which the teacher wants—for if a free and full use of natural signs is given him, he can ex-

plain words himself, and make their meaning intelligible. But let the Principals of our Deaf and Dumb Institutions meet the teachers, say one half-day in each fortnight, for the purpose of aiding them in the acquisition of natural signs. At these meetings, narratives—previously assigned, and thoroughly studied—might be recited in signs by the teachers; all imperfections and defects of the performance being carefully noted, and afterwards pointed out by the Principal. The teachers should also be practised in reasoning by signs. Entire chapters of the Bible should be rehearsed in signs, with such explanations as are necessary to make the connection and thought intelligible. Sacred and other poetry should also be translated and expressed in signs. Modes of teaching might also be illustrated. It may, perhaps, be thought that this latter object would be better accomplished by the Principal going successively into the several classes, and there giving the needed instruction. But is it wise to have a teacher degraded in the eyes of his class, as he would be by such a course? On the alternate week, it might be well to have a public exercise for the pupils, of a similar character that is for public recitation, in signs, dialogues, arguments, representations of the passions and emotions of the mind. Such an exercise would afford an agreeable variety to the somewhat monotonous life of the Deaf and Dumb in our Institutions, and could not fail also to prove of substantial benefit. Clearness and distinctness of signs would promote distinctness of thought; graceful signs and attitudes would lead to improvement of manners. The shuffling tread and spavined walk of many of the pupils would give place to free and natural movements.

In behalf of the plan here suggested, it may be urged, finally, that it is the only way in which thoroughly-accomplished teachers can be made. It is a fact, patent to all, that the first generation of American Instructors are distinguished for clear, deliberate signs. Why are our oldest teachers so much in advance of others in their knowledge and use of signs? Not because they have been longer in the business, but because they went through a severe training in the making of signs. The art was then new, deemed almost miraculous, and those who sought to practise it not only gave money, like Simon Magus, but freely devoted their time to the work of perfecting themselves in it. As pronunciation can be corrected only by the ear of another, so signs can be

corrected only by the eye of another. Left as the teacher of the present day is, to pick up his signs from the pupils, how can it be otherwise than that they should be ungraceful and contracted, and even to a considerable extent unintelligible? It may be thought that a half-day each fortnight devoted to the instruction of the teachers, will be taking too much time from the pupils. The answer is, that it will be more than compensated by the increased efficiency of the teachers, and their greater zeal and interest in their work. Again, it may be said that the Principal has no time to superintend such a course of instruction in signs as has been indicated. I am quite aware that the labors and cares of the Principal are already excessive, and I would have them lightened, rather than increased. There is, I think, a tendency in all our Institutions to occupy the Principal with clerk labors and outside matters, and to withdraw him more and more from the department of instruction. Selected, as he has been, for his post, on account of his familiarity with signs, and his experience in teaching, how absurd and unreasonable is it that he should be compelled "to leave the word of God to serve tables." Who is to keep up and advance the course of instruction, if not he? Why should not all those duties, which interfere with the true idea of his position, be devolved upon the Steward, and thus the thoughts and hands of the Principal be left free for the great work of improving the instruments and the methods of instruction?

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Mr. STONE. I have listened with great pleasure to the paper just read, and entirely concur in the suggestions made in reference to the proper method of acquiring a knowledge of the sign language. Certainly, a man who is not master of his business, must be deemed unsuited to the duties of teacher. I regard it as all-important to the success of a teacher, that he should be a complete master of the sign language, so as to be able to elucidate by this medium the most abstruse and difficult subjects. To attain this facility, I know of no other means than skillful instruction and careful study.

Mr. DUNLAP. I have great reluctance in expressing my views

upon the subject of this paper. I am glad, however, that such a paper has been read, for it proposes to supply the greatest *want* that I have felt as a teacher of the Deaf and Dumb.

My views coincide entirely with those expressed, in reference to the best method of training new teachers, and of becoming proficient in the sign language. I was not aware that the teachers of any Deaf and Dumb Institution ever held meetings for cultivation of the Sign Language. I had imagined the method suggested in the paper just read, to be the only way in which teachers could become masters of their profession, and secure uniformity in signs. How the masters of the *art* ever attained such skill in signs, has often been to me a matter of wonder. My opinion is, we are deteriorating.

Often have I asked for the philosophy of the signs used for certain words, but have never received any satisfactory answer; for instance, the signs used for the words, "father,"\* "mother," "impossible," &c. The paper just read gives a fine solution of the sign for this last word.

Unless there is an effort made to prevent it, the next generation of teachers will have lost many of the original signs, or their philosophy, or so changed them, as to destroy their significancy and beauty. Hence, the great want of a Key, as suggested by the paper just read, to keep in remembrance signs and their philosophy, and for reference, to new teachers. If those who are now competent would make such a vocabulary, they would confer a lasting benefit on future generations, and prevent this degeneracy which is gradually going on. Must every new teacher commence where the first began? Then, of what advantage is experience?

There is a greater uniformity needed, not only in Institutions widely separated, but among teachers in the same Institution. I will illustrate this proposition by describing a few signs used in the Indiana Institution, and comparing them with the signs used

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\* Some time during the discussion, Dr. PEET said, that the sign for "father," was first the sign for man, then raising the hands with the palms upwards, as if bearing something, the philosophy of it being a man-bearer. The Indiana sign is quite different. It is, first, the sign for man, then extending the hands and arms obliquely to the right, with the open palms towards the face, elevating the right as high as the top of the head, and the left as high as the cheek.—DUNLAP.

in other Institutions for the same words. "Forget"—place the fore-fingers of both hands in front of the forehead, and slip them by each other.

Dr. PEET. I would like to know the philosophy of that—

Mr. DUNLAP. I have often asked the same question.

Mr. STONE. That is very similar to the sign we use for the word "figurative," in the Ohio Institution.

Mr. DUNLAP. Again, the sign used in Indiana for the phrase, "do not know," or "know not," is made by passing the open hand across the forehead, as if wiping something from it. This is precisely the sign used in other Institutions for the word "forget;" and the sign for the phrase, "know not," or "do not know," is made by placing the open hand upon the forehead, as "to know," then throwing it outward from the body.

The sign in the Virginia Institution for the word "fun," is made by striking the end of the nose with the fore-finger several times in quick succession, with a downward motion.

These illustrations are sufficient to show the necessity of such a Key as suggested in Mr. Keep's paper, which would accomplish much in establishing uniformity among all the Institutions.

Teachers of the Deaf and Dumb should strive to attain the highest point of efficiency possible. Who would think of employing a man to paint his portrait, who had only practised on barn doors? The man who had attained a mastery in his art would be employed. How much more important is it for teachers of the Deaf and Dumb to be masters of their profession, who have immortal minds to unchain from their dark cells of ignorance and to develop into harmonious action, and to lead to the great fountain of life and knowledge, from Nature up to Nature's God. Surely, no means within the teacher's attainment ought to be lightly esteemed for the accomplishment of so noble an object.

A poor sign-maker may be a successful teacher; but, all things being equal, the accomplished sign-maker will be the most successful. It is the opinion of some, that the best way for a teacher to "acquire a knowledge of the sign language," is to pick up signs by association with the pupils, attendance on lectures, and study. All these are essential; but, alone, I think, must fail of success. The Deaf and Dumb generally make small and indistinct signs, and often very unintelligible—hence, they are bad

models for imitation. And where the teachers do not have meetings for improvement, they will often glide into bad habits, and also differ widely among themselves. How is a new teacher ever to become accomplished, when he is daily discovering inconsistencies throughout the whole school? Must he go to the teachers and principal separately? They all give him a different solution, and his difficulties are only increased. These things have a tendency to disgust the mind with the profession, and tempt the new teacher to pronounce the sign language a humbug, and the education of the Deaf and Dumb a failure. The method suggested by this paper is the *only one* by which teachers can become accomplished. Let there be stated meetings for recitation of pieces of prose, poetry, and chapters from the Bible, with illustrations of the meaning, while the principal and teachers note defects and criticize the performance, and it cannot fail to accomplish much good.

In conclusion, I would say, it is my humble opinion, that the principal who neglects these meetings, and leaves the teacher to struggle on *alone*, is neglecting HIS DUTY.

Mr. TALBOT. I may be allowed to add my mite to the discussion on this subject. I am glad that it has arisen, for it treats upon a subject which is of great importance to the teachers of the Deaf Mute. I can appeal to my short experience of two years, to prove that the practice which has been adopted in our Institution in Ohio, of weekly meetings, is very effective in increasing the capacity of teachers as sign-makers, and in securing greater clearness in making these signs. This system has been of great service to all of us. As, for myself, I had a difficulty in the beginning with respect to the formation of signs, but it was soon overcome by the habit acquired from this familiarity with the general system. I must say that our Superintendent has taken great pains in our sign-making. When I commenced the business of teaching, I received lessons every day with one or two young teachers in making signs, and I could see from week to week where I was gaining. I could look back from time to time, and say there is a point where there was a difficulty, which is now overcome. I attribute this progress partly to the instruction thus received, and partly to another source suggested in the essay, viz: a regular attendance on the Chapel exercises, both on the Sabbath and at morning and evening prayers. I

conceive that this attendance by all the teachers, at all the religious exercises, is of great benefit to them, and I will state one or two particulars, in which I consider it of service.

If we as a body attended at these exercises, we should see a *variety* of sign-making, for there is as great a variety of styles in sign-making, as there is in writing. By attending those services, we see every variety. There the younger teachers see the signs of the older ones. They see where the old master has made signs to express a particular idea. They can compare these signs, so as to ascertain which are the most expressive for this idea; and thus gathering up the different varieties, can find something that will be of great use. Moreover, the very presence of the whole body of instructors excites a spirit of generous rivalry in the younger teachers, and stimulates them to do their best, so that they are likely to make their signs better than if each one was alone. I think, therefore, that it is a matter of importance that teachers should accustom themselves to attend these meetings.

But there is a greater reason why we should adopt this course. It is important that we should meet, as an Institution, for religious worship; and that when the Institution meets, the *whole* Institution should come together, as one family, for their religious exercises. If the teachers are absent, the pupils will soon get the impression that the chapel services are of little account, and thus their good effect will be greatly weakened.

In the absence of this concert, the system of sign-making becomes deteriorated; and the young teacher, left to himself, adopts some signs at variance with the recognized system of instruction. This plan of a general meeting for making signs, with the additional one of regular attendance on the religious exercises of the school, will effectually guard against the possibility of such a result, and secure perfect harmony and efficiency in the system of signs. I know not what is the state of things in other Institutions, as I have never had the pleasure of attending any such exercises except in our own Institution; but I have reason to apprehend that there is a lack of attention to this matter. My opinion is, that by a faithful practice of one general system of instruction, and a careful use of all the helps at our command, much good may be accomplished in this direction.

Mr. MACINTIRE. I do not rise for the purpose of entering



into the discussion at length of the subject before the Convention, but simply to make a remark or two upon one point.

With most of the views expressed in the paper just read, and the remarks made upon it, I fully concur. But there is one particular in which I differ from the gentlemen, if I have rightly apprehended their meaning. It seems to me that the learning of signs by imitating others, is made to assume an importance that does not belong to it. The person who attempts to learn the sign language by imitating the signs made by others, is like a foreigner trying to learn our language by merely listening to some one reading, or by endeavoring to imitate the sounds of the words as they are pronounced—he becomes a mere copyist, without life or spirit. He grasps at the shadow, and misses the substance. He looks at the husk, instead of seeking the kernel.

While I would teach beginners the general principles of signs, and their philosophy, I would not demand that they should exactly copy mine. I would endeavor to have them evolve their signs from themselves rather than derive them from others. The experience of Mr. Jacobs, as related to me by himself, is just in point. More than thirty years ago he went from Kentucky to the American Asylum at Hartford for the purpose of learning the language of signs and to qualify himself for organizing an Institution for Deaf Mutes in his own State. As signs were not taught in books he was told that the only way to learn them was from the living teacher. He diligently set himself to work and availed himself of every opportunity of learning in that way, by visiting the classes and witnessing the performances of the teachers. He found that he had undertaken an herculean task, to commit to memory signs for all the words in our language. After a diligent and pains-taking effort for more than a year, he became disheartened and almost in despair of ever accomplishing the task, when it occurred to him that he could invent signs, that he should evolve signs from his own mind and the nature of the subjects treated of, and that he should depend upon himself and less upon others. He made the experiment, and from that time forward his way was clear from difficulty. He took charge of a class of several years' standing and taught it with success for six months without assistance from the other teachers—he never afterwards asked them for signs for words.

He has now been Principal of the Kentucky Asylum for over thirty years, and there have been few, if any, who have been more successful teachers of the Deaf and Dumb.

Sign-making is only one element in the success of a teacher, and there is such a thing as giving it an undue importance. The best sign-maker is by no means necessarily the best teacher. As well might it be said that the best reader was the best teacher of speaking and hearing children. It is a fact, I think, among our pupils, that the best pantomimists are generally among the poorest scholars, and the reason is that they neglect other essentials for this mere accomplishment. So also a teacher may spend too much of his time endeavoring to copy from the masters of the art.

Dr. PEET. I do not intend to go into a discussion of the whole question of methodical signs—that was gone over pretty fully at the Convention in Ohio. But it seems to me that there are some things which we should understand, in order to arrive at an intelligent conclusion with regard to what is wanted. I certainly do concur with the ideas expressed in the paper just read.

I will state my own experience in reference to this matter, as it so happens that I was one of those who learned signs under the earliest system introduced into this country by Mr. Gallaudet and Mr. Clerc. When I first joined the school at Hartford, I received instruction daily from an hour to an hour and a half from the eminent masters of the art just named; not merely learning individual signs, but having explained to me the philosophy of each sign. But, sir, while I was doing this, I would not neglect to associate with the pupils, to study their gestures and the expression of their countenances, to put in practice the signs I had learned, and to acquire the colloquial use of the language. A man who while learning signs would neglect to practice himself in their colloquial use by taking part in the conversations of the pupils, would be as wise as Dr. Franklin said a boy would be, who would not go into the water till after he had learned to swim. He must begin in water not beyond his depth, and go in deeper as he acquired skill and confidence. So it was with me. The very first day I went to Hartford, Mr. Clerc returned from a visit to Philadelphia. I recollect very well the dialogue we had in the sign language.

What we need, in the first place, is the sign language as used by the Deaf and Dumb among themselves. No teacher of the Deaf and Dumb can ever be efficient in his calling who has not made himself familiar with their colloquial language. I hold that the power of expressing one's ideas correctly and fluently in a given language is not to be acquired from books, or from formal lessons; but by association with those who understand and use the language. Still the acquisition of a language, whether of gestures or words, will be greatly facilitated by a knowledge of its *elements*—of its etymology and of the laws which govern its combinations. We can learn to use individual signs and expressions ready made, but we cannot provide for new cases without a knowledge of the philosophy and general laws of the language. With those to whom the language is vernacular, this knowledge comes instinctively as the fruit of long practice; but for those who, with minds already mature, attempt to learn a new language, it is almost indispensable to any satisfactory progress, that the elements, laws and idioms of the language should be intelligibly explained to them at the beginning.

The elements of the sign language are very few comparatively; and when they are pointed out, those who have only witnessed specimens of the language in its improved and copious form, will be surprised that a few simple elements should be capable of such a variety of combinations. These elements, when properly symbolized, are probably the most expressive, and by far the most self-interpreting signs for ideas, that are ever used in the intercourse of men. Does a traveller or voyager find himself among people whose spoken language is unknown to him, he has instinctively recourse to the elements of the language of gestures, and by means of signs, partly the promptings of nature, and partly invented on the spur of the occasion, endeavors to reach their understandings and touch their hearts. For the benefit of some of my younger brethren, it may not be improper for me to illustrate by remarks and examples this expressive and universal character of the elements of the sign language.

Of these elements, the simplest are those called *signs of indication*; that is to say, merely pointing to objects—the circumstances of the case, and the relations between the parties sufficiently explaining what you mean by pointing to them.

If the lady of the house wants a room swept, she will have

no difficulty in making her wishes known to the servant without using a word, merely pointing to the broom and then to the room.

If you had a German in your employ who did not understand your language, and you wanted a field of grass cut down, by pointing to the scythe and to the field he will readily understand you. And if you wished him to chop wood at the door, it would be sufficient to point to the axe and the wood pile; indeed, if he was accustomed to provide wood for the stove, it would be enough to point to the stove, he would at once understand that he was to procure more fuel. (Dr. Peet gave several further illustrations of the facility of communicating ideas by mere signs of indication, by pointing to the instruments to be used, and the materials to be operated on, etc.)

Signs of indication can also be used to a considerable extent in asking and answering questions. For instance, you point to chips taken out of the bark of a favorite tree, and are answered by pointing to your little boy with his hatchet. Or you point to ears and stalks of corn torn and trampled down; and receive an intelligible answer, by pointing to the tracks of a horse, and to a broken rail in the fence. Mere signs of indication can be used for communication to an extent few people have any idea of. I will suppose another case. An American settling in Mexico, hires a dozen servants and an overseer, none of whom understands his language. He wishes one to chop wood, another to plough, a third to hoe, and soon, calling the attention of his overseer by a gesture, he points to each man in turn, indicating the tools he is to use, and the objects he is to operate upon. Now, supposing that these tools and objects are not within a convenient distance, it will answer, at least after a little practice, just as well to have pictures or models of them at hand, and point to these.

Instead of these pictures, the Deaf and Dumb when they would speak of absent objects, use the second class of signs, *descriptive signs*, by which objects are designated by tracing an outline in the air, and by representing their parts and motions, and the uses made of them—*e. g.*, a carriage is denoted by describing, on each side of you, circles for the wheels. I will give an example of these descriptive signs. (Here Dr. Peet described an elephant by signs.)

A full description of any object by signs is obviously too long for purposes of communication. Hence the use of *signs of reduction*, as Sicard termed them, by which one part of an object, or one characteristic trait or motion is taken as the representative of the whole object. Thus, an elephant is represented by his trunk, a mule by his ears, an ox by his horns, a cow by her horns and the action of milking; and so on in an infinity of cases. Here is room for difference of dialects. One Deaf Mute may fall upon one sign and another upon another sign, for the same object, both natural; but one very likely more graceful and convenient than the other; and the sign language is improved by selecting the best. Take, for example, the sign for a *fish*. Now you can suggest the idea of a fish by imitating the motions of fishing with a rod and line; or with a net, or even of removing the scales with a knife; or by drawing in the air the outline of a fish. Any one of these signs would be sufficiently intelligible if once adopted between any two persons. But the sign which has been adopted in our institutions is more graceful and convenient, more characteristic of the object, and less liable to be confounded with the signs for catching or for dressing fish. A fish swims by striking with his tail laterally each way, thus: (Here Dr. Peet gave his hand the motion he described.) This has been adopted as the sign for a fish.

Well, sir, there is another class of strictly natural signs that express passions and emotions. These, I need not say, consist in simulating the appropriate expression of the countenance, aided by such gestures as are natural to a man laboring under such emotions. As beginners may find it difficult to call up the appropriate expression of each emotion at will, we combine with it a sign of a fourth class, the *metaphorical* or the *allegorical*. By these allegorical signs, for example, we refer passions and emotions to the heart, and intellectual operations to the forehead. Thus, for instance, the signs for *love, anger, joy, sorrow*, etc. are made by the hand on the heart, and the signs for *understand, think, know, remember, forget*, etc. are referred to the forehead.

It is by means of metaphorical or allegorical signs that the sign-language is enabled to ascend from the material to the intellectual and moral world. It puts the equal scale for justice; cleanness for holiness; dependence on something above us for faith;

rubbing out for forgiveness; straight forward speech for truth. These signs can be multiplied to any desirable extent; and by their aid the language of gestures, if it is not already, may, by diligent cultivation, become equally copious and precise with our long cultivated and refined spoken language.

The language of signs has a syntax of its own; simple and natural it is true, but so different from the syntax of modern spoken languages that a translation of any given sentence into colloquial signs will very seldom follow the order of the words. This syntax is not accidental. It is part of the very essence of the language, and to violate it would make of signs an unintelligible jargon. Hence it is, that the signs called methodical cannot become colloquial. To use simple signs arranged in the order of words would induce as much confusion of ideas as, for instance, to ask for a *black shoe*, when we mean a *shoe black*. To make any sense of these *methodical* signs, it becomes necessary to load them with auxiliary signs and inflections corresponding to the cases and tenses and persons, etc. of speech. These auxiliary signs the Deaf and Dumb mind rejects as unintelligible, or at least useless incumbrances, as far as colloquial intercourse is concerned. Yet they are sometimes useful in the school room to define words, and to explain their grammatical relations.

But though to this extent I approve of what are called methodical signs, I would not use them to the extent advocated by Mr. Jacobs, the estimable head of the Kentucky Institution. And especially I cannot agree with the theory he has advanced of disusing colloquial signs whenever the teacher finds it possible to make himself understood without their aid. That a lad may become a good rider, frequent practice is no doubt essential, but it is not necessary that he should be strictly prohibited ever to go on his own feet. To prohibit a Deaf Mute to use colloquial signs would abridge his enjoyments and cramp his faculties to such a degree that by the diminution of mental stimulus and power, his progress in our language is more likely to be hindered than promoted.

There is, of course, a great variety of *styles* in sign-making. The individual signs of two teachers vary as much as their handwriting, and in syntax and connection they vary as much as any two writers or speakers in the same language vary in style. The best is undoubtedly that which is most clearly intelligible and

most impressive. The old round hand copy is a good rule here. Learn to write or to sign well before you try to write or to sign fast. Let your signs be large and deliberately made, and especially be careful to preserve the proper expression of the countenance and attitude of the body. Another point which Mr. Galaudet paid much attention to, and which powerfully aids the impressiveness of a narrative in signs, by lending it an air of reality, is to be careful to preserve the *locality*: e. g. to change place yourself whenever you represent a second interlocutor, or whenever the scene of the narrative changes. It would also be improper to point to the *West* when you are speaking of the *rising* of the sun.

Whether, in the style or mode of sign-making, there has been a deterioration since the time of the early instructors, it does not become me, as one of those early instructors, to express an opinion. I may indeed be permitted to say, that I think we have never had more eloquent sign-makers than some of the early American teachers. Whether the survivors of that generation can sustain the reputation of their cotemporaries, is not for me to say. But I can say, with reference to my own practice, that whenever I have a new teacher to be instructed in signs, I enjoin upon him to practice himself in sign-making by intercourse with the pupils.

It seems to me that if there has been any going backward, as was alluded to in the paper just read, that must have been because there was a want of experience in the head of the Institution. I have heard one of the modern instructors say, that an Institution had been successful in spite of its head. But this must be of rare occurrence. No one will doubt that the head of an Institution should be experienced and competent to secure its full efficiency and progress in usefulness.

Mr. STONE. I wish the gentleman would be more explicit. Could he not particularize the Institution to which he refers?

Dr. PEET. I do not refer to the accomplished head of the Institution of Ohio. It is important that not only the art of making signs should be practically understood, but also the philosophy of it. I do not think it possible to give any specific rules for the acquisition of the sign language, except to study them in living models, and practice yourself by intercourse with the teachers and pupils; just as a child will learn French by liv-



ing with French children. But for the improvement of the language—to promote its grace, perspicuity and precision, some general rules may be given. For instance, in describing animate objects, you should endeavor to seize on the most characteristic property of that object. A fish (as I have already remarked) is characterized by its mode of swimming; a bird, by its bill; a serpent, from its sinuous locomotion. Tools are best designated by the manner of holding and using them; but it is to be remarked here, as in other cases, that the hands and fingers often serve as representatives of objects. Instead of representing a saw by the action of using an imaginary saw, it is more convenient and readily intelligible, to suppose the open right hand a saw, and saw with it upon the other arm. Inanimate objects, as fixed pieces of furniture, or features of the landscape, are usually best represented by their outlines. Here the open hand describes a surface, while the index finger traces a line. The hand rises before us to denote a hill. The finger points out a star, or follows the zigzag course of lightning. To come down to a more domestic example, when I want to describe a table, I spread out my hands at the proper height to recall the idea of its surface, and with my index fingers mark the boundaries of the surface. Dishes may then be put upon the table to make the idea clearer. I suppose you all know, that when you have to explain a new word, you must make your pantomimic descriptions fuller than is necessary, merely to recall the same object in conversation.

Another point is the derivation of signs, one from another. If all the words of a copious language were *radicals*, each independent of all the rest, the labor of acquiring it would be multiplied many-fold. When we have learned the general laws of the derivation and composition of words, each radical word that we learn gives us the key to a whole family of words. So it is with signs, even to a greater extent than with speech. In speech, to *think*, to *know*, to *remember*, to *forget*, to *intend*, etc., are all radically different words. Their corresponding signs are derivatives from a common root; as I have already observed, such intellectual operations are, in the sign language, referred to the forehead.

I will give another instance of a numerous family of signs derived from a common root, by the addition of suffixes, (for the genius of the sign language does not admit of *prefixes*.) A ref-

erence to the *hat* is the established sign for a *man*; and in practice, however contrary to strict propriety, is used to denote a *male* in general. Another sign that also has come down to us from the Abbé de l'Epee, is to denote a *woman* by her *cap*, descending one side of the face, and tied under the chin. This sign has also been generalized and applied to all *females*. Now, from the former sign, as a *radix*, are formed the signs for a man, a boy, an old man, a husband, a bachelor, etc.; and from the latter the signs for a woman, a girl, a maid, a wife, a widow, etc. When these two signs are applied to animals, they are used not as before, *substantively*, but *adjectively*. Consequently, they cease to form the principal, that is, the first indicated part of the compound, and become *suffixes*. For a *boy*, we make the sign for a *male* first, and add the sign for his size or years as a suffix. For a *male bird*, we make the sign for a bird first, and add the *male* sign as a suffix. (Dr. Peet illustrated his remarks by making each sign as he described it.)

I will say a few words more concerning methodical signs. There are teachers, of whom Mr. Jacobs is one of the most noted, who hold that the Deaf and Dumb cannot read, except by translating words into signs, and as such a translation is most readily made into signs following the order of the words, they think it incumbent on them to accustom the pupil to repeat the signs, for every sentence he reads or writes, in the strict order of the words. The practical effect of this is, that the translation into signs of a new sentence is about as unintelligible to the pupil, as the written sentence itself. The written sentence is explained by methodical signs, and if the teacher finds these are not understood, he "reluctantly and as a last resort," so Mr. Jacobs says, explains the methodical signs by colloquial signs. I see no necessity for this round-about mode of explanation; and suspect that, in many cases, the teacher, who is zealously bent on disusing colloquial signs, will take it for granted, on insufficient evidence, that his translation by methodical signs was understood. Experience has abundantly shown that our pupils will learn to use written language well merely by explanations in colloquial signs. In training him to the constant use of methodical signs, without necessity for it, the teacher is about as wise as the simple rustic who balances his bag of corn by a stone on the other side of a horse, when he might as well put half the corn on

each side. Methodical signs, used in the manner under consideration, are about as useless a weight for the pupil to carry as the balancing stone.

(Here Dr. Peet gave an illustration of the unintelligible character of methodical, as compared with colloquial signs, making signs for the sentence: "Do not eat that apple. The apple is unripe, and will make you sick.")

I do not object to methodical signs on certain occasions; but to employ them primarily and permanently is contrary to my ideas of efficiency, and incompatible with the highest final success, inasmuch as the highest degree of success at which we aim, is to lead our pupil to think directly in words, without the necessary intermediation of signs.

I say, in conclusion, that it is desirable the young teacher should be made acquainted by his superior, not only with the theory and practice of the art of instruction, but also with the philosophy of the language of signs, the best style of sign-making, and the reasons for preferring certain signs. But that to acquire the colloquial sign language, he should seek frequent intercourse with the pupils. This is the amount, sir, of what I have to say upon this subject.

Mr. STONE, in a few words, advocated the propriety of affording definite and systematic instruction, while the teacher should, in addition, seek aid from his own observations and reflections.

Mr. LAURENT CLERC, the venerable Deaf-Mute Instructor in the American Asylum at Hartford, ascended the platform, and spoke by signs, as follows: (Mr. Stone acting as interpreter :) Many years ago, the signs were more regular and more according to the meaning of words. Since that time, certain signs of much importance have been omitted or dropped, and others introduced and adopted, which have not any correct signification at all, and some of the teachers have been thus unconsciously led to learn them from those pupils who were green. The green pupils, who come to the Institutions, make certain signs, which no one but their parents, relatives and neighbors can understand, and which do not convey exact ideas. (He here illustrated some of the bad signs taught recently.) These signs he never taught, and were never taught by Mr. Gallaudet. It is bad to learn signs from other children. (He gave here some signs, which he described as vulgar.)

Teachers must think and remember that they can do but little without teaching the different parts of speech, as for instance: *To see, not to see, see, do not see, having seen, not having seen, being seen, not being seen, not having been seen, shall see, should see, will see, would see, &c.*

They must know the different forms of verbs in their own minds to understand them. It is important to teach these different uses of speech distinctly. It is also important to teach that most of the verbs have *seven* different forms, viz: 1. To think, (verb.) 2. Thinking, (active participle.) 3. Thought, (passive participle.) 4. Thought, Thoughtfulness, (noun.) 5. Thoughtful, (adjective.) 6. Thoughtfully, (adverb.) 7. A thinker, (personal noun.)

It is likewise important to teach that adjectives can be expressed in *six* different ways, viz: 1, *good*—2, *better than*—3, *the best of*—4, *as good as*—5, *so good, that*—and, 6, *so good as to*. And when the adjective is a long word, it must be taught as follows: 1, *violent*—2, *more violent than*—3, *the most violent of*—4, *as violent as*—5, *so violent, that*—and, 6, *so violent as to*.

Though a person can read or understand signs, I doubt whether he uses them as parts of speech. (Mr. Clerc here illustrated the present form of expressing: *I eat. I do not eat. Do I eat? Do I not eat?*)

He gave the different inflections of verbs, and said, that while teaching, he always used the signs for the tenses of the indicative, potential, imperative, subjunctive and infinitive moods, in the affirmative, negative and interrogative way.

Finally, he said the best way for the teachers of the Deaf and Dumb was to learn the signs, and to receive private lessons from experienced teachers; and that unless they did so, far from producing good fruit, they would not only degenerate the language of signs, but also make poor scholars, and render them incapable of understanding what they read in books or newspapers. He moreover said, he thought it indispensable that the Principals or Superintendents of the Institutions ought to see their teachers discard every thing vulgar in their system of instruction.

After a few remarks by Mr. GILLET, the paper read by Mr. Keep was ordered to be received and put on file.

Mr. KEEP then offered the following resolution, which was adopted:

*Resolved*, That the morning sessions of this Convention be opened by prayer, in the language of signs, and the explanation of a passage of Scripture; the person conducting the exercises to be designated by the President.

Mr. MORRIS, from the Committee on Business, submitted the following resolution, in reference to the invitation extended to the members of the Convention, by the Board of Directors of the Lunatic Asylum, to visit that Institution and dine with them :

*Resolved*, That the thanks of this Convention be presented to the Board of Directors of the Western Lunatic Asylum for their polite invitation, and that it be accepted.

The resolution was adopted.

On motion of Mr. MACINTIRE, the Convention adjourned until 10 o'clock, A. M., the day following.

## SECOND DAY.

*Thursday, August 14, 1856.*

The Convention met at 10 o'clock, A. M.

In accordance with the resolution offered by Mr. Keep yesterday, the Convention was opened with an explanation of a passage of Scripture and prayer in the sign language. The text chosen was Mark xii. 13: "Thou shalt love thy neighbor as thyself, &c." Dr. PEET officiating, and Mr. STONE acting as interpreter.

The minutes of yesterday's proceedings were read, and, being amended, were approved.

The amendment made was to include editors in the list of persons who were to occupy seats in the Convention as honorary members, which was done on motion of Mr. COOKE, the chairman of the committee which had that subject in charge.

Mr. TYLER, on behalf of the Committee on Credentials, moved that the following names of Delegates be added to those already reported: N. P. Walker, of South Carolina, Principal; Charles M. Grow, formerly Instructor in the North Carolina Institution; Misses Mary H. C. Cooke and Maria E. Cooke, Instructresses of the Blind in the North Carolina Institution; Holdridge Chidester, Virginia; and Mrs. D. W. Coleman, Instructress of the Blind, Virginia.

The motion was agreed to.

On motion of Mr. MORRIS, Mr. N. P. Walker was added to the list of Vice Presidents.

In conformity with the motion made by Dr. PEET on yesterday, and agreed to by the Convention, the President appointed Rev. John R. Keep to fill the vacancy in the Committee on the subject of Trades taught in the different Institutions, their advantages and disadvantages, &c., &c., created by the death of Mr. Rae; and Mr. Walker to the Committee for the future Publication of the Annals.

Mr. STONE, from the Committee on Publication, made a verbal report, to the effect that nearly two thousand copies of the proceedings of the last Convention were published, and numbers were sent to each Institution in the country.

Reports being in order, Mr. COOKE moved to suspend the rules

for the purpose of passing by the regular business, to enable him to offer a resolution.

The motion was agreed to; whereupon, he offered the following resolution:

*Resolved*, That a committee of three be appointed to take into consideration the subject of the organization of Institutions for the Deaf and Dumb, with special reference to their internal arrangement, and report to this Convention.

The resolution was adopted, and the following committee appointed: Messrs. Peet, Cooke, and MacIntire.

The President announced the next business in order to be reports from committees, and as Dr. Peet had not finished the reading of his Report yesterday, he thought it would be well that he should now proceed.

Dr. PEET. Mr. President, there was some complaint made on yesterday that the speakers and those who read papers could not be heard. I presume the difficulty can be remedied by turning my face to the audience, with your permission.

Mr. CLERC, before Dr. Peet resumed the reading of his Report, presented the following communication, which was read and ordered to be accepted and filed:

Since our three last Conventions, I have often been asked how we went on in our Institutions, and my reply has always been, that we got along very well—that several new schools have been established—that we met with liberal patronage—that we had made many good scholars, and that we were now teaching higher branches of sciences, besides teaching penmanship and drawing.

With respect to inquiries whether any improvements had been made in the method of imparting instruction to the Deaf and Mutes, I am sorry to say that my answer was, that I did not see that anything new had yet been made anywhere—that on the contrary, I found with regret that several of the *new* and *young teachers* did not take the trouble to learn our fine and admirable language of signs; nor did they endeavor to study and cultivate the system of instruction, or to teach the construction of sentences by analyzing them. They generally resort too much to the use of their fingers, imagining that their pupils understand quite well what is spelled or dictated to them, nor do they care much about ascertaining whether their pupils understand all they write so well down on their slates. If they did, they would soon dis-



cover that the memory of their pupils is more to be depended upon than their intelligence. It is not till the pupils have been several years under instruction, that they succeed better in expressing their thoughts. The best compositions of some of our pupils, which have appeared in our annual Reports or in newspapers or letters, are from pupils who once heard and spoke until reaching a certain age. Witness the thoughts *on music*, by a young lady, inserted in the first number of the seventh volume of the Annals of the Deaf and Dumb. That young lady could hear and speak until she was twelve years old, according to some who have known her, and fifteen according to others. I also think that other compositions which have appeared in print have been corrected a great deal; for the style of those compositions is like that of those who hear and speak; whereas that of the Deaf and Dumb from birth is quite different.

Whenever you happen to see or to meet with a Deaf and Dumb person who has been educated, no matter in what Institution, and wish to know how far he can write correctly, the best way to ascertain is this: Take a book of poetry; open it at random; show him four or six verses; and after he has read, request him to change them in prose, according to the rules of grammar and the order of ideas; and if he does it well, you are convinced that he is master of the language; but if he cannot, then you have proof that his letters or addresses or stories, which are so well composed, have been corrected by friends.

L. CLERC.

Dr. PEET then proceeded with the reading of his Report on the Legal Responsibilities of the Deaf and Dumb, which was adopted on motion of Mr. MORRIS.

Dr. STONE, from the Committee on Business, announced the title of a paper "On the Relation of the Work of Educating the Deaf and Dumb to the Social and Mental Development of the Instructor." By John M. Francis.

Mr. MACINTIRE read the following paper prepared by Mr. H. S. Gillet, of the Indiana Institution:

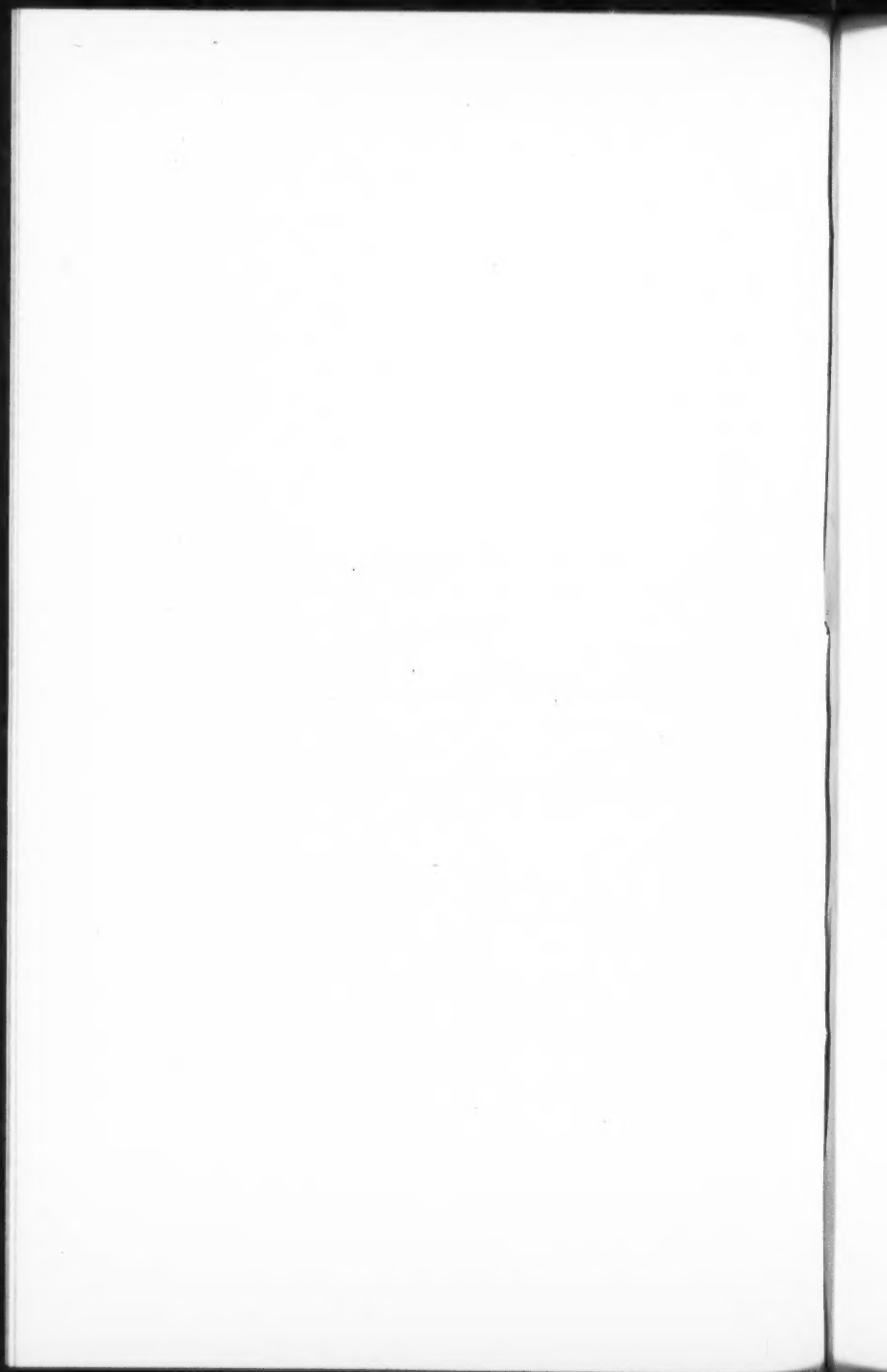
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H I N T S  
ON  
INSTRUCTION IN PRIMARY SCHOOLS,  
SUGGESTED BY THE  
METHODS PURSUED  
IN  
TEACHING DEAF MUTES.

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BY H. S. GILLET.

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## HINTS ON INSTRUCTION IN PRIMARY SCHOOLS, SUGGESTED BY THE METHODS PURSUED IN TEACHING DEAF MUTES.

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BY H. S. GILLET.

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Every truth must bear some relation to, and harmonize with every other truth. This relation and harmony, though not always apparent at first, will be found sooner or later to exist. When the fields of inquiry lie side by side, many useful hints may be gathered by the laborer in each from the other's experience. This is true, not only in schools of different rank, from primary to collegiate, but as well in those of different character. While the common schools of the country are linked together, in the regards of the Commonwealth, by the cords of a happy fraternity, our educational asylums need not be placed aloof in the isolation of step-children or adopted outcasts. They claim to belong to the same family, and while they share in the viands at the common board, contribute to the number of industrious and exemplary members of the community. Beyond this, in the great enterprise of training the young for their appropriate sphere in life, these Institutions, it is believed, can throw much light on the interesting questions agitated among those charged with the different departments of this work. It may not be out of place to remark here, that Instructors in these Asylums, and those engaged in other schools, have not heretofore manifested such a degree of interest in each other's work as might be profitable to themselves, beneficial to the cause in which they are laboring, or is due to the State, whose agents they are, in the most vital, though often deemed the most humble, part of its public administration.

Much the larger part of school as well as home education, after

the subject can talk, is effected through the medium of the ear. Next in this service ranks the eye. But when the chief has fallen, the command devolves on the next in rank; and though experience may ripen him into an able captain, yet it requires time and success to inspire his government with unlimited confidence in his ability. In the Mute there is a sense of this great loss, and it is difficult to make him feel that it is not irreparable, or can in any way be compensated.

The Deaf Mute and the speaking pupil both commence their school education with the same original powers of mind. But those powers in the one have been stimulated to higher vigor, by being exercised upon a greater number and variety of objects, in the wider field which the eye and ear unitedly open to the observation.

While both advance mainly in the same direction in their studies, one starts from a point very far in advance of his fellow. He commences with a considerable knowledge of the language of his teachers and books, while the acquisition of that language is the severest part of the Mute's education. The speaker starts off on a track already laid; but the poor Mute, though illy provided with tools, is obliged to construct his road as he travels. True, some of the elementary steps, indispensable to the speaker, are entirely omitted by the Mute, yet this omission diminishes in no perceptible degree the weary length of his journey. The power of letters, the distinction of vowels and consonants, the machinery of syllables, accent, inflection, emphasis and modulation, being adapted to the ear, are mysterious to him, and could be of no practicable use if comprehended.

Both use mostly the same books. But in the earlier periods of instruction, instead of the spelling-book and reader, the Mute has a text-book consisting chiefly of a series of graduated sentences and classified phrases.

The diversity of the processes employed in the two cases is rendered necessary, on account of the widely different languages which are the medium of communication with the pupils. The one is vocal or written, perfected by time and philosophy, and adapted to the multifarious subjects of human thought. The other is pantomimic, and the exigencies of human intercourse create a necessity for its use only to a very limited extent. The one is the end; to the attainment of which, the other is the

means. One is conventional and artificial, the other is natural. When it ceases to be natural, it no longer fulfills its design. It is employed to a great extent in the ordinary intercourse of Mutes. There is in it much that is exquisitely beautiful and finely impressive. But however well adapted it may be to a descriptive style of communication, it never attains, and never will attain the dignity of a hand-maid of literature.

The Mute first learns to write the letters of the alphabet on a black-board, as the speaker to distinguish them in a book. He then makes the manual sign for each letter, as the latter pronounces its name. One spells with, the other without syllables. In the formation of a word, the attention of the Mute is always directed first to the idea, and afterwards to the word representing it. The speaker, in most cases, it is believed, takes the word regardless of the idea. The object of the one is, properly to represent the thought; the other, correctly to form its collective sign merely. To the one, the word always represents the idea; to the other, the connection of the idea with the word is casual, if connected at all; it is too often the result of his own previous knowledge, rather than of school instruction.

In relation to connected words or sentences, the aim of the speaker is primarily to read them, that is, to pronounce them with facility, in order ultimately to apprehend their sense. The aim of the Mute is primarily to understand their combined signification, in order immediately, as well as ultimately, to compose other sentences of similar form. One is every-day reading; the other reading and composing. One is acquiring the elements of a known, the other the elements, construction and use of an unknown language. As the Mute advances in the study of the sciences, he continues to make language a prominent object of attention, while the speaker, being more familiar with it, bends his mind more intently to the consideration of things and their relations.

The energies of the Mute are constantly employed in acquiring, by visible means only, the possession and use of that key, which alone can open every avenue to his future progress.

The Instructor, instead of attending to different classes of Mutes in succession, usually gives his whole attention to a single class of eighteen to twenty-five for several years.

The mode of recitation is commonly writing the lesson from

memory on the black-board, or spelling it on the fingers. The teacher improves these occasions to direct their attention to the meaning and use of words and phrases occurring in the lesson, and to require them to be written in a different connection.

During the annual school session, of about ten months, the pupils are wholly under the care of the Instructors and other officers of the Institution, who act as preachers, Sabbath-school teachers and moral counsellors. A daily morning and evening exposition of Scripture and prayer, two religious lectures on the Sabbath, and a Bible lesson, studied by each class on Sunday, and occupying a portion of Monday in its recitation and elucidation, constitute a regular portion of the ordinary routine of these Institutions.

From a comparison of the processes of Deaf-Mute Instruction, with those understood to be employed in other schools in the country, the following topics are suggested in this paper :

1. The importance of visible expression and gesture in school instruction.

Though the language of signs, in any great perfection, or with much particularity, cannot be employed to aid the speaker in giving instruction; yet, within certain limits, it can and should be used. The motions of the body and limbs, or what is denominated gesture, and especially the expression of the countenance, always add force and vivacity to the utterance of a speaker, and impart a sympathy to the hearers. They are an important auxiliary in depicting the feelings, or even in describing sensible objects. Nor are they out of place in dealing with abstract topics. The countenance should always accompany the voice in the serious or comic, and, generally, where the language spoken or read implies strong emotion. The fingers, hands and arms can be effectively used in indicating direction, relative position, or size. We naturally use them to render a remark strongly emphatic, to express applause, or a menace. How spontaneously the motion of the head makes known assent or refusal! The stamping of the foot and attitudes of the body could find their appropriate use in the school.

Let a teacher lounge in his chair, fix his eyes on vacancy, or on a book in his hand, and repeat to his scholars a description of some incident. Then, let him lay aside his book, rise to his feet, and relate a narrative of equal intrinsic interest, accompanying



it with such expression of countenance and gesticulation as naturally spring from a soul absorbed in the subject, and the difference will be marked, in the attention of the hearers, their accurate comprehension of the subject, and the permanency and moral influence produced. Some teachers, in conducting a recitation or school exercise, always stand and rarely look in a book, thus bringing to bear upon their class the combined influence of visible and vocal language.

The mind can often be more accurately informed, and the heart more deeply affected, through the eye than through the ear. The Sabbath lecture to the Mutes is of necessity simple, because addressed to young and partially educated persons. But these simple and literal expositions, to one familiar with sign language, possess a more captivating interest, and enchain the attention more strongly, than the profound elaborations of the pulpit, or the polished literary lecture. The manner must account for this. Well may the language of motion be called the language of emotion.

In the consideration of this subject, we must remember that natural and forcible gesture depends more on the mind than on the body; on an ardent and sympathetic temperament more than on any rules of art. It is among the susceptible and impetuous spirits of sunny climes that the models of oratorical art have lived. There, canvas has portrayed and marble embodied most exquisitely the visible forms of emotion. The external aids of the advocate must have been powerful, indeed, when the dispenser of justice would listen to him only in the dark. This great accessory of teaching is sadly neglected in the school, the lecture-room, and the pulpit.

2. The expediency of superadding written to vocal spelling. The Deaf Mute, it is believed, learns to spell sooner than the speaker, and is not so often incorrect in his orthography. This may seem strange, when we consider that to him letters possess no power, and are representative of nothing whatever, unless it be the aliquot parts of a word. Their collocation is wholly arbitrary. Syllables are of no value to him. No sound, nor any thing equivalent, guides him in the selection and arrangement of the elements of a word. It is a sheer effort of memory; but memory of what? Is it the recollection of the written or fingered word? Commonly, when he is introduced to a new word, it is written.

He then transfers it to his fingers, and ever afterwards, when at a loss, puts his fingers in motion, that peradventure they may from physical habit retain what his mind has partially lost. We observe something analogous in speaking pupils, when spelling a word, or repeating from memory the words of a sentence. If the letter or word be forgotten, they again and again commence and repeat the first, expecting the tongue somehow to carry them through the difficulty. The Mute child thinks by signs, as other children do by words. But as the mind becomes matured and vigorous, both words and signs, it is believed, cease to be necessary to the operation of thought. In writing a word, he probably relies first on the mental image of its combined written or printed characters, then on the physical habit of the hand in tracing them on the black-board, and, when these are at fault, he recurs as a last resort to his fingers. The speaking scholar depends, in the first place, on sound. From the pronounced word, he calculates what letter sounds are in it, and in what order they stand. But as many words contain silent letters, and the same sound is not always represented by the same letter, he must trust his memory of the sound and order of the letters, as they have been previously enunciated in spelling.

Speaking children are prone to study aloud, as Mutes are with the fingers. But as the mind ripens, the image of the word seems to become more distinctly impressed. Hence, we find the use of whispering and fingering in study is gradually discontinued.

In the earliest efforts at spelling, then, the speaker depends mainly on a recollection of the spoken—the Mute on that of the written elements. Now, if the former could add writing to pronunciation, visible to vocal aids, would it not facilitate his progress, and impress the verbal elements with greater precision on his memory? The most accurate orthographers are those who write or print most. Persons of good education, who write seldom, are apt to blunder. Men commonly retain more readily the forms and relations of visible objects, than they do the modulations of music. Does not the mind perceive more distinctly by the eye than by the ear? From considerations of this kind, it is suggested that spelling in primary schools might be more profitably conducted with the use of the black-board.

3. Connecting the signification and use with the spelling of

words. Spelling, to the Mute, is the expression of a thought; to the speaker, it is expressing the sign, not always accompanied by the thought. The Mute begins with the idea, then learns to spell and write the word representing it, and, lastly, to use the word in connection with others. The speaker usually takes the word isolated from others making sense with it, or standing in a column with others having accent, number of syllables, prefix, or termination similar, and spells it often, without knowing or regarding its meaning. Thus, it is with him simply a matter of visible and vocal signs—visible characters, representing letter sounds, singly or combined; and vocal utterances, representing elementary characters or unknown ideas. Some or many of the significations he may happen to know; but the chief object is to learn the proper elements, and their right combination, forming the conventional sign of some idea, which he may or may not chance to acquire, and attach to its appropriate symbol at some future period. A man may learn to make an instrument before he understands its nature or use; but would it not be more practical, and no less philosophical, if made exclusively for himself, to intermingle the use with the manufacture? Why may not the speaker learn to spell and read at the same time, commencing with words as they stand in simple sentences, whose meaning he can comprehend, letting ideas and their representative words go hand in hand? Why may not the spelling-book be dispensed with for a time, and introduced at a subsequent period, for the purpose of syllabication, accent and derivation, in connection with, or about the same time with technical grammar. We are sometimes led by a seeming philosophy, the fair proportions of a theory, or the beaten path of custom, aside from what is natural and practical, and best adapted to the actual state of things. It is proposed that words, and their signification and use in connected language, in the earlier stages of instruction, always go together; and that writing on the black-board be introduced at the commencement of school education, and made a chief instrument there, as well as in orthographical exercises.

It is the object of the teacher to have the time of the Mute during school hours constantly occupied: whereas, in other schools much time is unimproved by scholars of the younger grade. The physical exercise of writing, or even drawing rude

*art*

pictures, with the name or remarks attached, as they might be able, could be done while the teacher's attention was elsewhere engaged, and would mingle the manual with the mental, amusement with instruction, substitute activity for idleness, agreeable occupation for weariness, to say nothing of acquiring a steadiness of the muscles of the hand and arm, and laying the foundation for facility in chirography and composition.

4. Teaching the relations and dependance of words in early exercises in reading and composition. In arranging words, so as to form connected language, the Mute becomes gradually acquainted with the leading principles which govern the forms of words and construction of sentences, or what might be styled the etymology and syntax of language. He seldom devotes much attention to grammar, as it is systematized in the text-books,—rarely acquiring its technical definitions, terms, and rules. But from the beginning, and throughout the course, he is slowly getting the substance without the fashionable drapery in which grammarians have adorned it. His daily labor is to take a given fact or condition of things, and endeavor to clothe it in appropriate language. He learns the true forms and juxtapositions necessary to express the conditions of mode, time, number, case, person, et cetera, though he could not explain them in the set terms of the books. He gets the spirit without the science.

This is proposed as the most natural method of making the first acquaintance with grammar; for it is believed best to accord with the true philosophy of mind and language. Language and grammar are united, like body and spirit, and, in the process of education, they should go together. But the schoolmaster has divorced them. This method disencumbers it of its technicalities, which tend to bewilder the young mind, or come to be regarded as the main structure, instead of the mere scaffolding. The best mode of studying any science or art, is to do it, as far as possible, in its practical relations, taking the abstract in its connection with the concrete. With the most perfect knowledge of the rules of the art of swimming, a man would certainly drown, should he cast himself into the deep without some previous practice in the application of his rules. A child could learn by degrees the dependance and relation of words in a sentence, commencing as soon as he begins to read and write.

Then, when he undertakes the complicated machinery of the scientific text-book, it will not be so irksome a task.

5. The necessity of particularizing and literalizing to children. The natural language of the Mute is eminently literal. It is adapted to particulars. General terms can seldom be expressed by signs without circumlocution. For instance, in signifying the word animal, he makes several distinct signs, which, literally translated, would be "horse, cow, sheep, et cetera, embraced in one class." In his book, therefore, the teacher must resolve for him all such words into their constituent particulars. To all children, general terms are liable to be general obscurities. Here is where inexperienced teachers, however well educated, are likely to err.

These general forms of expression are deemed to be a great fault in our books for primary classes, to say nothing of the higher departments. Many a teacher of adults, even, envelops knowledge in a luminous fog of generalities, "darkening counsel by words without knowledge." If a master genius be distinguished by any one characteristic, it is the power of comprehending and classifying particulars, and in such a way that they shall not lose their particular individuality in an uncertain haze of general terms. A proper attention to this subject is an important element of success in teaching, as in every other sphere of human action.

6. Moral and religious, paramount to intellectual development. The last subject to be noticed in this connection is moral instruction; I mean the education of the conscience and the heart. The time will come, and it is to be hoped at no distant day, when the development of the intellect will be subordinate, and thus assume its just prominence in all our educational institutions. The Asylum is the home of the pupils for most of the year; consequently, there is an opportunity not only, but necessity, for supervision of all that relates to their moral or religious training. In the daily devotions, the Sabbath services, the adjustment of their social differences, as well as in Bible instruction during school hours, there is a field for inculcating those great principles which lie at the foundation of our welfare as intelligent, accountable beings. relig

Though so ample an opportunity be not presented in other schools, yet it should never be forgotten, that a suitable portion

of time cannot be more wisely and profitably employed than for this purpose. In no school, more than in the Asylum, is greater effort made in this direction, and in none are its salutary effects more marked upon the deportment of the inmates. This should fill as large a plan in the system of any particular school, as a reasonable regard to the sentiments of the community may render expedient. Our systems of school and college education are, in the judgment of many judicious friends of education, deficient in this respect, perhaps unavoidably so. In most schools, a definite portion of time might be devoted each week, if not every day, to this subject. Moral and religious precepts might, at least, be intermingled in the general course of exercises, as an appropriate seasoning of the whole.

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The paper was ordered to be received and put on file; whereupon,

On motion of Mr. COVELL, the Convention took a recess until four o'clock, P. M.

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#### AFTERNOON SESSION.

The Convention re-assembled at four o'clock.

Mr. DUNLAP offered the following resolution, which was adopted:

*Resolved*, That in the opinion of this Convention, a portion of the time of our Conventions should be occupied in the discussion of the signs used for special words in the various Institutions.

On motion of Mr. STONE,

Mr. J. M. FRANCIS read the following paper:

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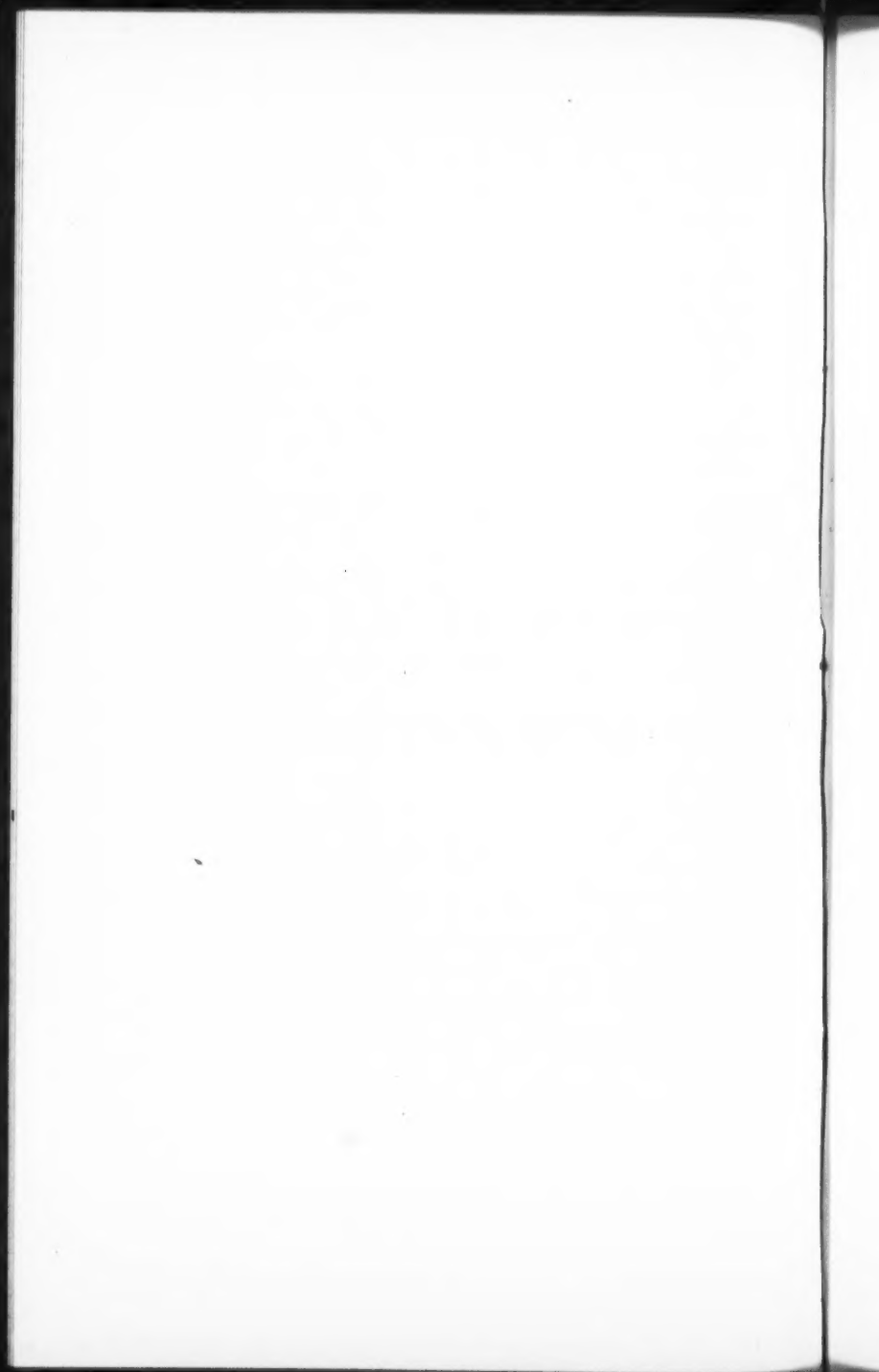
THE  
RELATION OF THE WORK  
OF  
INSTRUCTING THE DEAF AND DUMB  
TO  
SOCIAL AND MENTAL DEVELOPMENT.

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BY J. M. FRANCIS.

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## THE RELATION OF THE WORK OF INSTRUCTING THE DEAF AND DUMB TO SOCIAL AND MENTAL DEVELOPMENT.

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BY J. M. FRANCIS.

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The opinion is sometimes expressed, that the instructor of Deaf Mutes both buries himself to the world, and engages in an employment, whose successful prosecution requires but the most ordinary mental resources. Because the minds he would develop are not of the highest culture, if his intellectual furniture is not below mediocrity, he is regarded competent to the work. "Why," it is asked, "should a person, whose liberal education and fair ability fit him for a wider sphere, thus isolate himself? Why pursue an avocation, whose tendency is to dwarf the powers of his soul?"

The hearing of sentiments like the above has suggested the theme of the present paper. My purpose will be attained, if I succeed in exposing their fallacy, and thereby in leading to a more just appreciation of the nature of the work performed by the instructor of the Deaf and Dumb.

The idea of the anti-social influence of our employment must have originated with persons unacquainted both with Deaf Mute character and instruction. As the ancient philosophers supposed the earth flat, because it appeared thus to their limited vision, so these logicians, regarding the Deaf-Mute a semi-idiot with whom the teacher is confined in monkish isolation, have evolved a conclusion no less at variance with the truth. No one who has noticed the characteristics of this class in our Institutions, could have been guilty of such a heresy. Children are by nature social. It is only as they grow up influenced by the conventional usages of society, that they become ascetic and taciturn. But Deaf Mutes are less affected than others by these usages. No

sooner are they brought together, and scope given for the development of their social nature, than their natural vivacity, inquisitiveness, and ready sympathy, existing in all the freshness of young hearts, makes them the boon companion of one another. Quick to detect in the countenance the slightest alterations of feeling, their hearts are no less prompt to beat responsive to these varying emotions. Their peculiar misfortune, which must ever be a barrier to free intercourse with their speaking brethren, causes them to prize more highly the companionship of those with whom they can associate on equal terms. If their ears are closed to the concord of sweet sounds, their hearts make melody no less sweet in their own inter-communings.

The work of instructing Deaf-Mutes partakes no less largely of the social element. In other schools the pupil devotes the chief portion of his time to text-books, while that shorter period spent with his teacher is often consumed in mechanically repeating tasks in which he feels no interest. The Deaf-Mute pupil, on the contrary, giving the smaller portion of his time to the study of books, receives instruction in a more interesting and impressive form from a living teacher. This social nature lays the foundation for his instruction. It is through this alone that the teacher can quicken the dormant energies of his soul. The peculiar and graphic mode of presenting thoughts through the medium of the sign-language, aids in exciting interest and in stimulating inquiry. The speaking eye and expressive countenance, which give zest to social converse, and through which the teacher conveys the emotions of his soul, awaken corresponding emotions in the mind of his pupil. The latter has now discovered one with feelings to which he finds a counterpart in his own developing nature, and to him he is attracted by spontaneous sympathy. The bond is farther strengthened by the felt obligations of the pupil. Hence the teacher of the Deaf Mute has a hold upon him such as few other teachers can boast. His confiding charge comes to him with his troubles and his joys. He seeks his aid to resolve his doubts, to answer his inquiries, to augment his mental resources. The passing events of the day, familiarly communicated, are made the vehicles both of instruction and intercourse. The great object of the teacher is to restore his pupil to society, and his method throughout is in harmony with his purpose.

Let the inquiry now be made of teachers whether they have found this work hostile to social growth. Has it dwarfed your sympathies? Has it originated in you any monkish dispositions? So far as my observation and experience extend, the very reverse is true. I have seen the taciturn and reserved individual, after a few months spent in this employment, becoming social and genial. The ice was broken from his heart. The sun does not warm and vivify the earth more naturally than the teacher's work quickens his social nature.

Perhaps it will still be urged that our profession makes the teacher less a member of society; that he is prone to confine his intercourse to that small number with whom he is more immediately connected. If this were so, it would invalidate nothing already affirmed, but rather lead us to infer the ampleness of the materials there found for social aliment. But we do not admit this result. When a teacher enters the walls of an Institution for the Deaf and Dumb, he does not entomb himself. He does not leave behind his human heart, with its human needs and human sympathies. Nor does his work chill and dwarf, but rather warm and nurture his soul's longings. And however much he may enjoy intercourse with his pupils, he still feels their inferiority, and seeks the society of those of higher culture. While his daily work quickens his social nature, he knows, and acts upon the conviction, that its highest development can be reached only by associating with those of superior attainments.

The points of contact between the teacher and the world are more numerous than may at first be imagined. The scene of his labors is in a city or in a thickly settled community. Citizens and strangers throng to witness his interesting and novel work. Both in his daily tasks and in the intervals of his labors, the amplest facilities are afforded him for filling worthily his proper social sphere. If he is found wanting here, let not his employment be made the scape-goat to bear his offence, but let it rather be charged to some peculiar bias or defect of his own character.

Allied to the opinion already noticed, and originating from the same imperfect knowledge of our work, is the idea, occasionally advanced, that our profession is hostile no less to mental than to social vigor. Those entertaining such views must regard the teacher, who possesses a slight modicum of intelligence and culture above his pupils, competent to his task. Why not, on

the same principle, conclude the warmth of the moon-beams sufficient to dissolve the ice of the poles? It is because the faculties of the Deaf Mute are so locked in darkness, that greater skill and more ample resources are required to develop them. So difficult is this work, that a few years since it was regarded, not only a Herculean task, but an impossibility. Only men of strong minds, as well as large hearts, were able successfully to delve in this dark mine, from which they were told no valuable ore or precious stone could be extracted, and "to bring up from thence the gems of immortal spirits flashing with the light of intellect and glowing with the hues of Christian graces." The Abbé de l'Epee, Sicard, Gallaudet, and others, will be remembered, not only as the fathers of Deaf-Mute instruction, but as men of superior intellectual endowments. The conception and execution of their noble plans of benevolence do no less honor to their heads than to their hearts. Their most successful co-adjutors and followers have been men who would have made their mark in whatever direction they might have chosen to expend their energies.

The nature of the teacher's work, no less than an appeal to facts, affords an ample vindication from the charge in question. It is his great business to teach language. He must therefore be an adept in this most comprehensive and abstruse of all sciences. He must know the force of words in their various collocations—a knowledge which implies an acquaintance with every branch of science. He should be able to discriminate between synonymous terms, and to illustrate these discriminations by pertinent examples. The nice differences in shades of thought, as well as the anomalies of the language, he is to make familiar, not to the ear, but by his pantomimic signs, to the eye of his pupil. Nor has this pupil, like the foreigner, a knowledge of the structure of one language, and a ripe mental discipline to facilitate his teacher's task. And yet the foreigner, unless he lives where the sound of the spoken language he would acquire is continually falling upon his ear, rarely attains such proficiency in it as to employ it with ease and elegance. With all these advantages, it is admitted, he needs the aid of a skillful instructor in his arduous and perplexing task. But the Deaf Mute labors under much greater disadvantages, and surely has no less need of all the assistance the most competent teacher can furnish him. The

difficulties in his way have been so forcibly portrayed in a paper read at the preceding Convention of this body held in Columbus, O., that any attempt of mine to enumerate them would be more than a work of supererogation. Let any one peruse the article on "The Difficulties encountered by the Deaf and Dumb in Learning Language," and he will have a more just conception of the mental energy and resources demanded in the person who would successfully pilot him through these breakers.

Nor is it enough that the teacher be an adept in language. He must be a man of very versatile mental power. He should, through his illustrative examples, by which he teaches the use and force of words and the structure of language, also impart a knowledge of the leading facts in science and history. He should possess a vigorous imagination, that his illustrations may be both pertinent and ample. He must be able to simplify subjects the most abstruse, and to elucidate by example ideas the most abstract. He must task his inventive faculties to convey through physical signs, the highest metaphysical truths. He is to be fertile in resources, that he may be able at all times to enlist and sustain the interest of his pupils. He is to combine in his instructions the attractiveness of the romance with the advantages of the cyclopædia. His peculiar work requires peculiar qualifications over and above those demanded in other teachers. His efforts to awaken dormant minds must be more arduous; his interest in his pupils more constantly manifested; his skill and mental resources more continuously taxed. Not a single faculty does he possess which will not find here an ample theatre of activity. Instead of feeling that his work makes small demands upon his intellect, the true teacher more frequently laments his own insufficiency.

The instructor of the Deaf and Dumb may indeed make his profession a dull routine, hostile alike to mental progress and pleasure. But the same result will follow in any other profession when the heart is not enlisted. The preacher, with no love for his calling, will soon deliver his prosy sermons to drowsy hearers, if not to empty seats. The lawyer, with no enthusiasm to spur him to effort, will address his tedious arguments to heedless juries, or more likely be left to yawn in his office unsought. So the teacher of Deaf Mutes, with no interest in the great work he undertakes, will degrade it into an irksome, tread-mill

course. Such an one may find it very convenient to charge this result to the peculiar nature of his avocation. But the real trouble is in himself. He has mistaken his calling, and should engage in some more congenial pursuit. The true teacher, however, who zealously desires to elevate the unfortunate class for whom he labors, will pursue his calling with alacrity and pleasure, and will find in it, as has been already shown, ample scope for the development of all his energies.

And who, we may ask, will be so likely to feel a permanent interest in, and to possess a fitness for, the work of fostering and developing the dormant faculties of the Deaf and Dumb, as he who can, in some good measure, appreciate from his own experience the benefits of enlightened culture? Who will so successfully inculcate religious truth, as he whose own mental and moral powers have both been most thoroughly quickened? Will such an one, who realizes that he is like his Divine Saviour, giving language to the Dumb, and preparing them to sing the praises of Heaven, feel that he is engaged in a work unworthy to call forth his best energies? The greatness of the object for which he toils, the mental and moral welfare of the immortal minds committed to his charge, is sufficient to stimulate to its fullest capacity every power of his being. In a nobler sense than the Roman bard, he can exclaim, in view of the lasting and beneficent results of his labors,

"Exegi monumentum ære perennius."

Enough has been said to show the invalidity of the charge that our profession is hostile either to social or mental development. We believe all that is necessary to correct views on this subject is a more general understanding of Deaf-Mute character and instruction. It is worthy our inquiry how we may best disseminate this knowledge—whether our peculiar periodicals, having a limited circulation, sufficiently secure the desired result.

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Mr. STONE regarded the subject of this paper as one of very great importance. He said that there had been a disposition in some cases, particularly in starting new institutions, to engage persons who were not qualified for instructors. He deemed it of the first importance, that persons employed in the department of instruction should be men of accomplished education, and should possess high social qualities.

Mr. MACINTIRE. I am glad that this paper has been presented. There is an opinion entertained by some—even by otherwise very intelligent persons—that teaching the Deaf and Dumb was of a low grade of teaching; that whilst it is admitted that it is difficult and requires patience and perseverance, yet that not much learning nor intellect is necessary—that it is a mere a, b, c kind of work. This opinion, I know, is quite prevalent in some sections of the country, and I am gratified, therefore, that this paper has been read, because it contains arguments calculated to disprove such notions.

Mr. KEEP. I have not been aware of the existence of such a feeling upon this question. The difficulty, I apprehend, is rather in the mind of the young instructor himself. He may believe that he is cut off from society by reason of his peculiar position, and may often be impressed with the idea that his avocation is one of comparatively little consequence. It must be admitted that there is something of this disposition existing in our own schools, and this leads often to a degree of mental depression or indifference with respect to his avocation by no means favorable to the progress or improvement of the instructor. My own experience justifies me in saying, that this employment demands the very best minds we can procure, and that it is about the very best means for their improvement. It requires, indeed, a rare combination of mental faculties. It has been well said, that a teacher who does not take an interest in this noble work, must certainly have mistaken his calling, and should engage in some more congenial pursuit. It is only when a strong interest exists to foster and develop the germs of intellect by this form of instruction, that the task becomes agreeable, and the efficiency of the instructor enhanced.

I cannot conclude without offering my testimony in favor of the views presented in the paper which has just been read.

Mr. STONE. I am sure the Convention would be pleased to hear the views of Dr. Peet upon this subject.

Dr. PEET arose, in compliance with the desire just expressed, and explained briefly his views of what the qualifications of teachers should be. His remarks had reference principally to the necessity of the teachers possessing a high order of social and mental culture, habits of perseverance and a kind disposition—all of which, he said, were to a considerable extent essential to perfect efficiency in a teacher.

The paper was ordered to be received and put on file.

Dr. PEET then read the following paper on the Statistics of the Deaf and Dumb, and the State census of New York for 1855:

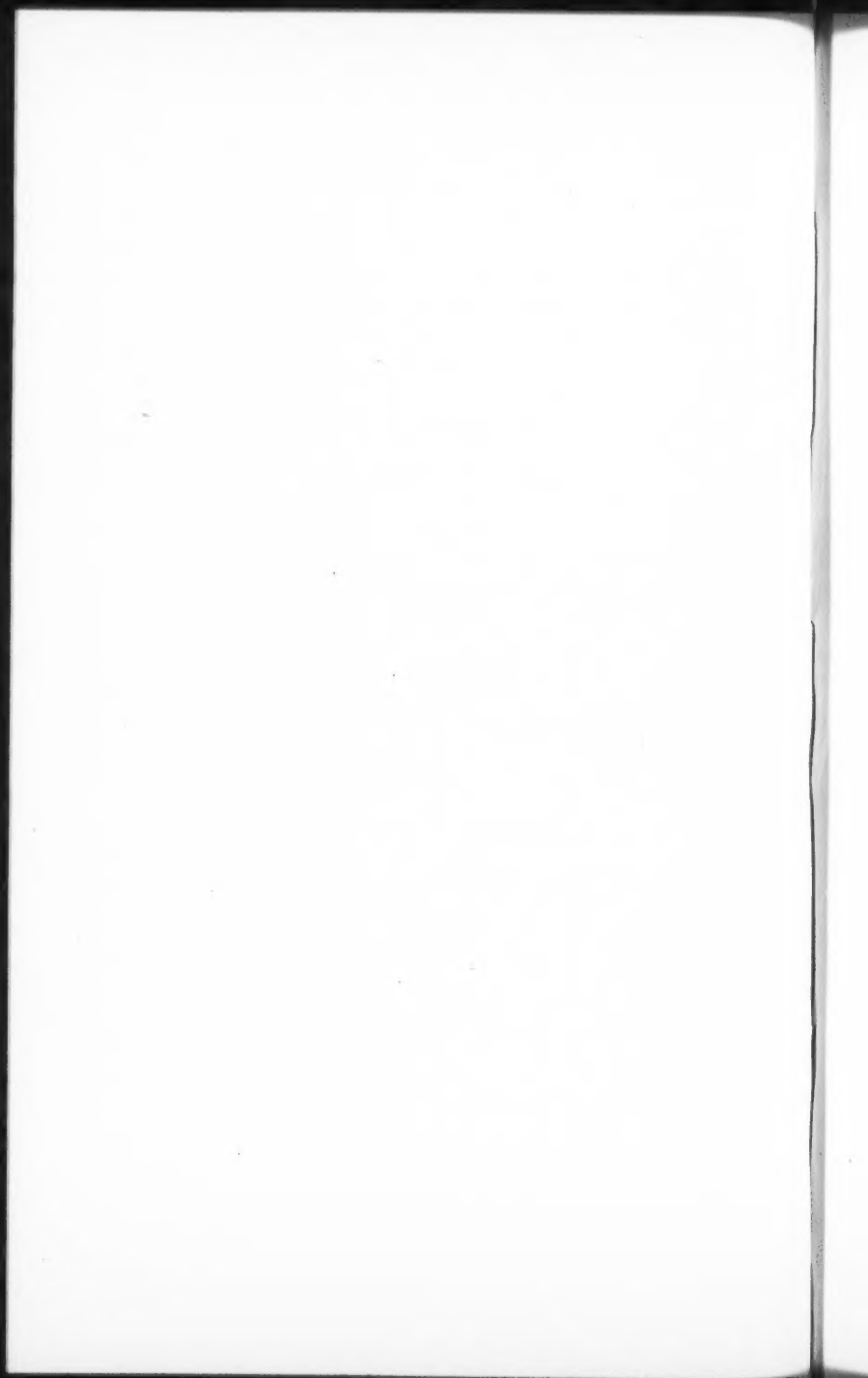
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STATISTICS  
OF THE  
DEAF AND DUMB,  
AND THE  
STATE CENSUS OF NEW YORK FOR 1855.

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BY HARVEY P. PEET, LL. D.

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## STATISTICS OF THE DEAF AND DUMB, AND THE STATE CENSUS OF NEW YORK FOR 1855.

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BY HARVEY P. PEET, LL.D.

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The importance of correct statistics of the Deaf and Dumb is so generally admitted, and is in itself so obvious, that it is unnecessary to enlarge on that point. But when we thus readily admit the importance of information as to the numbers of Deaf Mutes in a given population; the proportions of schoolable or not schoolable age; the proportions of congenital and accidental cases; the comparative longevity of this class of persons, and other like particulars; we always imply that these statistics, to be of value, must be *correct*, within reasonable limits—and their value evidently depends on the degree of their correctness.

The imperfect and erroneous character of the enumerations of the Deaf and Dumb, hitherto made in this country, has been often exposed, and, I believe, is now generally understood. All that can be said of them is, that the errors with which they abound appear to be so uniform, in like circumstances, that they can be, in a good measure reduced, like the lunar aberrations, to calculation—thus giving us a means of correcting the returns, so as to have a better approximation to the truth. Owing also to this uniformity of errors, the returns will serve tolerably well for a comparison between two districts of considerable population.

In taking the different State and National enumerations of population, prior to 1850, a line of the original schedules of population was given to each family, and the *number* of persons in each family who were of the various ages to be noted, or who were deaf and dumb, blind, etc., was placed in the appropriate column against the name of the head of the family. By this mode of enumeration, in addition to the other errors incidental

to a census, there was danger of inadvertently placing figures in the wrong columns. (See the Thirty-Fourth New York Report, p. 17, and note on p. 18.) To this source of error is manifestly to be ascribed the incredibly large (and often cited with surprise) proportion of Deaf Mutes returned in 1830 and 1840, among the colored population of the Northern and Middle States. In many cases, Deaf and Dumb, or otherwise afflicted colored persons, were returned from towns in which no colored persons, sound or afflicted, appeared by the population columns to exist.

In taking the National census for 1850, the plan was first adopted of giving a line to every *individual*, instead of one to each family. And the deaf and dumb, blind, insane, etc., were distinguished by writing those words in the last column, against the name of the individual. As the previous columns contained all the particulars respecting this individual, as sex, age, color, place of nativity, etc., here, supposing the original schedules to be carefully and correctly filled out, were abundant materials for making many interesting and valuable calculations respecting the Deaf and Dumb of the United States. But, to derive the full benefit of these materials, it was necessary that the names of all the Deaf Mutes should be extracted from the returns, together with all the particulars that appeared on the face of the returns respecting each. Many of the members of this Convention may recollect that, at the first Convention, held in New York at the time when the census of 1850 was being taken, a resolution was passed, (and, in pursuance of that resolution, a memorial, signed by the officers of the Convention, presented to the superintendent of the census,) expressing the wish of the Convention to have such a list prepared. The superintendent of the census deemed that Congress only had power to pass upon the memorial; and that body, with characteristic procrastination of all but political questions, never found time to consider the matter. Thus, we were left to the tables, such as they were, prepared at the census office. These tables, as those who have paid any attention to the subject of statistics are aware, added to the omissions of the census marshals a large amount of mistakes and omissions of the clerks in the census office, and were very far from embracing as many particulars as were desirable. Almost the only important point on which these tables served to

correct our previous notions on the statistics of the Deaf and Dumb in the United States, was by reducing to a reasonable figure the number returned as colored Deaf and Dumb.

The New York State census is taken the fifth year after each National census, thus securing a census of the State, alternately State and National, every fifth year. At each State census, beginning with 1825, enumerations of Deaf and Dumb of the State were made, showing, in spite of many obvious errors and omissions, a pretty uniform increase of Deaf Mutes in the State, with the advance of the whole population. If this increase, for some years past, has not seemed to keep pace proportionally with the increase of population in the State, it is to be ascribed to the fact that the greatest part of the increase, for some years past, has been in a few large cities and their suburbs; and, as I shall hereafter show, the returns of Deaf Mutes from cities are especially defective.

The last State census, taken for 1st June, 1855, was taken on an improved plan, substantially the same used in taking the United States census for 1850, with several additional columns, embodying some of the recommendations of Mr. De Bow, (see Compendium U. S. Census of 1850, p. 15,) with some other valuable information. At my suggestion, the Secretary of State has caused to be extracted, from the original population schedules of this census, a list of all the persons returned as deaf and dumb or deaf mute, deaf only, or dumb only; (for many of the marshals designate deaf mutes by one only of these words; though some of those returned as "deaf only" were merely deaf by old age, we find many of our former pupils designated as "deaf only" or "dumb only.") This list is made to embrace most, but not all of the particulars respecting each individual that appear on the original schedules. A part of these particulars were omitted in copying the list; because, in making it out, the same blanks prepared for taking the census being used, additional columns were wanted to give the name of the town or city, and the parent's name, and there being no space to rule such columns outside, as there should have been, part of the original columns were taken for this purpose. The particulars, thus omitted, (besides the numbering of dwellings and families,) were the material and value of the dwelling occupied, the relationship of the Deaf Mute to the family, and the place of nativity. The



omission of these columns is a matter of regret. We are thus prevented from making, as from the schedules as they stood we might have done, any calculations as to the influence of the kind of dwelling occupied, or of the *native* climate on the prevalence of deaf-dumbness; neither can we always tell from our list how many families contain more than one deaf and dumb person.

Still, the particulars embraced in our list present a body of information that, though incomplete, and doubtless in some cases erroneous, has still a positive value, much greater than a mere table of numbers and ages of Deaf Mutes would possess. With your permission and kind indulgence, I propose to give such results of a careful (though not yet thorough) examination of this list as are most likely to be of general interest.

The whole number of Deaf and Dumb, Dumb, and Deaf persons returned from the State is as follows:

	<i>Males.</i>	<i>Females.</i>	<i>Total.</i>
From the Institution, teachers and employees.....	6	5	11
From the Institution, pupils, deducting those from places out of the State.....	141	103	244
Total from the Institution.....	147	108	255
From the rest of the State.....	618	515	1133
Total.....	765	623	1388
Deduct pupils returned both from the Institution and from their respective towns.....	12	8	20
Leaves net returns.....	753	615	1368
Add pupils admitted since June, 1855, but omitted by the census marshals.....	11	16	27
Corrected number in the State.....	764	631	1395
Of these were persons of color.....	4	7	11
“ “ white.....	760	624	1384

The whole population of the State, for June, 1855, was 3,466,118, giving a proportion of one Deaf Mute to 2,486 souls. The colored population, which a little exceeded 50,000 in 1840, and had fallen off to 49,000 in 1850, may be estimated at 50,000, leaving about 3,416,000 whites. If these were divided between the sexes in nearly the same proportion as in 1850, we shall have in the State, in 1855, 1,731,000 white males and 1,686,000 white females. This gives the following proportions

of Deaf Mutes—white males, 1,2277; white females, 1,2700; colored, (both sexes,) 1.4556. The circumstance of there being more colored females deaf and dumb than colored males, the numbers being too small for an induction, may be regarded as merely accidental. The returns from the great cities of the State show, as usual with former enumerations, a great deficiency in the number of Deaf Mutes returned, as will appear by the annexed table, in which the number of Deaf Mutes is corrected, by referring pupils in school back to their homes:

<i>Cities.</i>	<i>Population.</i>	<i>Deaf Mutes, including those in school.</i>	<i>Pupils in school.</i>
New York.....	629,810	187	66
Brooklyn .....	205,250	63	16
Albany.....	57,333	19	7
Troy .....	33,269	7	2
Watervliet (West Troy).....	20,889	4	2
Buffalo .....	74,214	21	4
Rochester .....	43,177	15	3
Utica .....	22,169	8	1
Syracuse.....	25,107	3	1
<hr/>			
Total of cities containing 20,000 souls and upwards.....	1,111,876	330	102
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Rest of the State.....	2,354,242	1,065	43
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These figures give a proportion of one Deaf Mute in 3,369 souls returned for the larger cities, and one in 2,219 souls for the rest of the State. This difference is probably to be ascribed solely to the greater inaccuracy of the census of the cities. The number of pupils in school from those cities, it will be seen by the table, was 102, or about 1 to 11,000 of their population. From the rest of the State, we had in school 143, (employees not counted,) or about 1 to 16,600 of the population. This fact of there being so much larger a number of pupils in school from the cities, in proportion to population, makes it probable that, even if we suppose that much fewer Deaf-Mute children in the cities are kept from school, who ought to be there, yet the actual proportion of Deaf Mutes in the cities is, at least, as great as in the rest of the State.

Another noteworthy fact is the very small number returned as

under ten years of age. From the whole State, except the Institution, there were returned—

	<i>Males.</i>	<i>Females.</i>	<i>Total.</i>
Deaf Mutes under ten years.....	84	47	131
“        of ten years and over.....	534	468	1,002

giving, exclusive of those in the Institution, a proportion of about one male under ten, returned as Deaf and Dumb, to 5,200 persons of the same age, and one female to 9,100; while those over ten years are to the population of the same ages, the males as one to about 2,080 souls, the females as about one to 2,290. As the pupils in school, with very few exceptions, were over ten years of age, by taking them into the calculation, we should greatly increase the disproportion shown above. I have not now time for an accurate calculation; but, as nearly as I can now estimate, the proportion of Deaf Mutes over ten years, for the whole State, including pupils in school, to the population of the the same ages, is not less than one in 1,650 for the males, and one in 1,850 for the females.

Thus, we have found two very important ratios of correction: *first*, making the number from the cities as large in proportion as that returned from the rest of the State; and, *second*, allowing for the evident omission of at least one-half of the Deaf-Mute children under ten. There is, judging from the number of applications for the admission of pupils, no reason to suppose that the number of Deaf-Mute children in the State is less than formerly. On the contrary, there would appear, from the number of children of foreign birth that we have received within a few years, to have been a large increase of Deaf-Mute children by emigrations. We find the number of Deaf Mutes in the State, including those in the Institution, not from abroad, over ten years of age, to be about 675 males and 580 females. Allowing for the deficiency, which has been shown in the returns from the cities, the actual number over ten will not be far from 765 males and 660 females; in proportion to the population of the same ages about one Deaf Mute to 1,450 males, and one to 1,630 females, or a general average in the State of about one Deaf Mute in 1,540 souls. We have, indeed, to make allowances, on the other side, for persons improperly returned. In

some cases, idiots have probably been returned as *dumb*, and, in a larger number of cases, those returned as *deaf* were merely deaf by old age. We think, however, that the number of these in our list will hardly balance the number of Deaf Mutes overlooked out of the cities, not yet allowed for in our calculations, leaving the true proportion of Deaf Mutes in the State not less than above stated.

In European countries, the proportion of Deaf Mutes returned is usually much greater than that returned from most of our States; and it is probable the difference is owing, in large part, to the superior accuracy of European enumerations. And not only are they less liable to overlook Deaf Mutes, but they use more care to exclude improper returns. When, for instance, the census for Ireland was taken, Dr. Wilde, who had charge of the department of vital statistics, caused a particular examination to be made into the case of every one returned as Deaf and Dumb.

There are some minor causes of error, disclosed in the list before me, to which I have only time to allude. In a few cases, the same person seems to have been returned twice; not only pupils of the Institution, returned from the Institution, and again returned from their own towns, if found at home for vacation, when the marshal called; but sometimes, though rarely, Deaf Mutes who had recently changed their residence, or who, perhaps, had no fixed residence, are found returned from two different places. Another source of error seems to be the inadvertently writing the words "deaf and dumb" on the wrong line. In one case, we miss in our list the name of a married Deaf Mute lady, finding instead the name of a youth, probably her eldest son. And in another case, reversing the last, instead of the name of a young man, one of our dismissed pupils, we find the name of an elderly woman, supposed to be his mother or aunt. Errors like these will, on the whole, about balance each other.

The occupations of adult Deaf Mutes is a point of some interest, as a knowledge of the occupations which this class of persons have found most suitable, will aid us in conducting the industrial part of their education. We have not had time to make a table of the occupations of all the Deaf Mutes in the State; indeed, the occupation is omitted in the returns, in

so many cases, that such a table would be very imperfect. But having extracted a list of all those whom, after making every allowance for bad writing and spelling, and the mistakes of careless clerks in copying, and in some instances, for unsuspected change of name, we could recognize as former pupils of one of the New York schools, we find the occupations of those whose occupations were returned to be as follows:

<i>Males who were</i>		<i>Of whom were heads of families</i>
Farmers.....	59.....	26
Farm Laborer.....	1.....	1
Laborers.....	8.....	2
Servant.....	1.....	
Cabinet-Makers.....	6.....	2
Carpenters and Joiners.....	5.....	3
Boot and Shoe-Makers.....	10.....	5
Harness-Maker.....	1.....	
Tailors.....	4.....	1
Book-Binders.....	5.....	1
Stamper.....	1.....	1
Printers.....	2.....	2
Painters.....	2.....	1
Basket-Maker.....	1.....	
Lumber man.....	1.....	
Sawyer.....	1.....	
Clerk.....	1.....	
Teachers.....	4.....	
	<hr/> 113 <hr/>	<hr/> 45 <hr/>
<i>Females who were</i>		<i>Wives of</i>
Tailoresses.....	6	Farmers.....28
Dress-Makers.....	2	Laborers.....2
Seamstresses.....	2	Shoe-Makers.....3
Book-Folder.....	1	Printers.....2
Servants.....	4	Carpenters.....3
Teachers.....	3	Cabinet-Maker.....1

From this table, which presents a sufficiently extensive induction, we learn that a majority of Deaf Mutes become farmers, and that the females usually have no other employment than ordinary household occupations. In teaching trades in our Institutions, nearly all the male pupils acquire some mechanical skill. Even if they afterwards become farmers, this mechanical training will be found very useful, in enabling them to repair

tools, or harness, etc. It would hardly be practicable to give much practical instruction in farming while at school; but it would be easy, and evidently very useful and important, to give a series of lectures on the science and practice of agriculture; in which those branches of domestic economy that fall under the care of farmers' wives should not be forgotten.

We find in our list, among more than seventy families, of which one or both the heads were former pupils of our Institution, only three or four cases in which the infirmity has descended from the parents to the children.

As to the causes of deafness, though, by the instructions to the marshals, this point was to be embraced in the returns, the list before us presents so many omissions, that we have not attempted to make any calculations from it on that point. Our impression is that the information to be gained from the returns as to this subject is of very little value. We find as many as three cases from different parts of the State, all females, in which the same individual is returned as both deaf and dumb and blind.

I have not now time to pursue these calculations farther; but while on the subject of statistics, I will notice a statement of Mr. Jacobs of Kentucky, in the last report, concerning the comparative health and longevity of the Deaf and Dumb. The regimen, diet, and other hygienic precautions of Mr. Jacobs appear to be very judicious, and the exemption of his pupils, while in school, from fatal disease, has been remarkable and gratifying. But when he argues that the Deaf and Dumb in Kentucky live as long as those not Deaf and Dumb, because at least one-half of his first class, which entered thirty-two or thirty-three years ago are yet living, his premises hardly support his conclusions. By referring to the celebrated Carlisle Table of Mortality, (which can be consulted in the Compendium of the U. S. Census, p. 120,) it will be seen that, of 6,400 children of the age of twelve, 4,727, very nearly three-fourths, will be living at the age of forty-five, or thirty-three years hence. And among healthy country children of twelve to twenty, the proportion who will probably be living at the end of thirty-three years is considerably larger than this. A country friend of mine, making a list of a hundred youth of both sexes, who were at school with him 33 years ago, finds only about fifteen of the hundred to

have deceased. It may be however, by mere accident, the number of cases for the induction being small, that Mr. Jacob's facts fail, in this instance, to support his theory. My present information is too imperfect to enable me to estimate how large a proportion of our own early pupils are yet living. I would, however, recommend to teachers to collect information on this point, and if it be found that the Deaf and Dumb do not live as long as other people, we ought to seek for the causes, and the remedy for such an unfortunate result.

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MR. STONE remarked, that the Legislature of his State (Ohio) had recently passed a law to ascertain the number of the Deaf and Dumb of the Commonwealth. He was glad the subject had been presented, and expressed a hope that other States would pursue a similar course to obtain accurate statistics on this subject.

The President appointed Mr. STONE to perform the religious exercises of the following morning; after which, the Convention adjourned until nine o'clock to-morrow morning.

### THIRD DAY.

FRIDAY, *August 15.*

The Convention met at 9 o'clock pursuant to adjournment, Dr. PEET occupying the chair temporarily.

The PRESIDENT said, that in accordance with the resolution adopted by the Convention on Wednesday, Mr. STONE would open the proceedings with an explanation of a passage of Scripture, and prayer.

The text chosen was from Matthew xi. 20: "Come unto me all ye that labor and are heavy laden and I will give you rest."

Mr. TALBOT acted as interpreter.

At the close of these exercises, the PRESIDENT announced that the Convention was open for business, whereupon the minutes of yesterday's proceedings were read and approved.

Mr. SKINNER, the President, resumed the chair at this stage.

Mr. MACINTIRE, from the Committee on the future publication of the "American Annals," submitted the following report:

The Committee to whom was referred the subject of the future publication and support of the American Annals of the Deaf and Dumb, have had the same under consideration, and respectfully submit the following

#### REPORT:

In order to a right understanding of the subject, your committee deem it necessary to advert briefly to the circumstances in which the Annals originated, and to the manner in which the work has been sustained, from its inception to the present time.

In the year 1847, the Instructors of the American Asylum at Hartford, deeply feeling the importance of a periodical devoted to the promotion of the cause of Deaf-Mute education in this country, undertook the publication of such a work. The expense of the undertaking was borne by that Institution and the labor of editing and the articles furnished were supplied al-



most exclusively by the teachers at Hartford. After a trial of two years, and not having met with that assistance and encouragement from those in other Institutions, equally interested in the cause, which the successful prosecution of the enterprise demanded, its publication for a time was suspended.

At the Convention of American Instructors of the Deaf and Dumb, which assembled in the city of New York, in August, 1850, the subject of an organ to be devoted to the interests of the profession, was brought before the assembly. A deep interest was felt in the subject by all who were present at that meeting; and there seemed to be but one opinion, and that was, that such a periodical could and ought to be sustained by the friends of the cause in this country. After a long discussion as to the character of the work, the method of conducting it, and the best manner of sustaining it, the following plan was adopted by the Convention :

1. *Resolved*, That in the opinion of this Convention, it is expedient to sustain a periodical which shall be devoted to the interests of our profession.

2. *Resolved*, That the periodical shall be styled "The American Annals of the Deaf and Dumb" adopting the name, size, price, time of issuing and general appearance of the publication of that title recently issued in Hartford, and being regarded as a consummation of the series there commenced.

3. *Resolved*, That the periodical shall partake of a scientific and also of a popular character, embracing the widest range of subjects connected with the education of the Deaf and Dumb, and articles of a narrative or imaginative cast, such as may be interesting to educated Deaf Mutes and their intelligent friends.

4. *Resolved*, That the Convention appoint the editor of the proposed periodical.

5. *Resolved*, That an Executive Committee of three persons be appointed, to whom such matters as may by them be required, shall be referred by the editor.

6. *Resolved*, That the Executive Committee render the editor such aid, counsel and advice as he may require, and that they be empowered to elect an editor to perform the duties of his office till the next meeting of the Convention in case of the declension, resignation or death of the editor elected by the Convention.

7. *Resolved*, That while it shall be the duty of the editor to superintend the printing and publishing of the paper, his office as editor shall be simply to decide upon the literary articles presented for the work, leaving the authors solely responsible, under their own signatures, for the sentiments they contain.

8. *Resolved*, That the expense of printing and publishing the periodical shall

be defrayed by the different Institutions in proportion to the number of pupils in each, while the funds which may be received from the subscribers to the work, shall be appropriated to compensate the editor for his labor; *provided*, that in case the sum exceeds two hundred dollars per annum, the excess shall go to defray the expense of publication.

Under this arrangement the Annals has been published from the year 1850 to the present time. The plan contemplated that all the Institutions in the country for the education of the Deaf and Dumb, should join in the enterprise—that the expense of publishing the work should be equally borne by each in proportion to the number of pupils, and that the editor's salary should be paid out of the proceeds of individual subscriptions to the paper. These expectations by no means have been realized. Not one-half of the Institutions entered into the arrangement. Only the American Asylum, the New York, Indiana, Illinois, North Carolina and South Carolina Institutions would agree to assume the responsibility of meeting the payment of the expense of carrying on the publication. A year subsequently the North Carolina Institution withdrew from the arrangement, and in 1853 the Indiana Institution also withdrew, and the Louisiana Institution joined the Association. Thus there were only five Institutions left, to meet any deficiency that might occur in the expense of publishing the work. It is true that some of the other Institutions contributed towards defraying the expense of the periodical, but none of them, except the four above mentioned, continued equal partners in the concern. The Indiana Institution contributed \$60 annually, the Ohio Institution \$50, the Virginia Institution \$30, the South Carolina Institution \$6.85 and a few other, small sums, besides some small amounts contributed by individuals not connected with Institutions. In no one year as will be perceived by a reference to the reports of the Executive Committee has the amount realized from subscriptions been sufficient, as was intended, to defray the expense of the editor's salary, and the deficiency has been charged to the associated Institutions, thus making the inequality more glaring.

From the foregoing statements your committee think the members of the Convention will be able to see that the plan for publishing the Annals has not hitherto operated fairly, and consequently that it ought to be modified. It is the duty of no one Institution to sustain such a periodical more than another;

all are equally interested in it, and each ought to do her just proportion towards its support; and it is believed that there are few engaged in the great cause of Deaf-Mute instruction, who will not be willing, when the matter is properly equalized and presented, to do his full share towards it.

In order, therefore, to secure this end, your committee have prepared the following resolutions, and now present them to the Convention, and recommend their adoption :

1. *Resolved*, That in the opinion of this Convention it is highly important that those engaged in the education of the Deaf and Dumb should have a periodical to advocate the cause in which they are laboring, and that it is expedient and practicable for those having the management of the different Institutions for the Deaf and Dumb in this country to sustain such a periodical.

2. *Resolved*, That the American Annals of the Deaf and Dumb as heretofore published, is, in its main features, such a periodical as is needed, and that the Convention approves of its form, size, price, time of issuing and general appearance, and recommends its continuance.

3. *Resolved*, That this Convention elect three persons, to serve for two years or until the next Convention, as an Executive Committee of the Annals, to whom shall be committed the control and management of the periodical, and who shall have power to appoint an editor, or editors, and fix their compensation, and do all other things, which they, in their judgment, may deem necessary for carrying on the enterprise.

4. *Resolved*, That the Executive Committee, as soon after their election as may be practicable, shall apply to the superintendents or Boards of Trustees of the several Institutions in the United States and solicit from them their aid in support of the work, and if such a number of Institutions shall be found willing to pledge themselves to the payment of any deficiency that may occur in the necessary expenses that may be incurred, over and above the amount that may be received from subscribers, in editing and publishing the work, in proportion to the number of pupils in each, as will in their opinion justify the undertaking, then they shall proceed to elect an editor, and make all other arrangements necessary for having the periodical issued, and they shall continue its publication, on the terms and conditions expressed in these resolutions for two years and\* until the meeting of the next Convention.

The proposition of the New England Gallaudet Association of Deaf Mutes, referred by the Convention to this committee, has been duly considered by them, and they recommend that it be accepted, and offer for adoption the following resolution :

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\* Amended by substituting "and" for "or."

*Resolved*, That the American Annals of the Deaf and Dumb be open to the communications of the members of the New England Gallaudet Association, and that the work be supplied to them at the same rates as it is furnished to the associated Institutions.

THOMAS MACINTIRE,  
H. P. PEET,  
JOHN R. KEEP,  
COLLINS STONE,  
THOMAS J. TRIST,  
PHILIP G. GILLET,  
W. D. COOKE,  
J. C. COVELL,  
N. P. WALKER.

Mr. STONE. I like the report as a whole very well and shall vote for its acceptance; but I doubt very much whether it will accomplish the object contemplated. As I understand it, it proposes to inquire of the different Institutions, whether they will come into an arrangement to pay their *pro rata* of the expenses of this publication. If the larger portion give their assent, the "Annals" will be continued; if not, they must be suspended. I desire that some provision should be made to ensure their publication, in the event that a majority of the Institution should decline the *pro rata* system of meeting the expense.

Mr. MACINTIRE. I am satisfied that this can be done and that a sufficient number of Institutions can be combined to sustain the work. There have been complaints made that some of the Institutions have not been applied to. All of them have not had representatives in our Conventions. This report imposes upon the Executive Committee the duty of laying the matter before the several Institutions. If they solicit aid and are refused, why, the committee and Convention have done their duty. I feel the importance of having an organ of this kind, and I shall do whatever may be in my power to sustain it.

Dr. PEET. I would suggest that the question on the adoption of the resolutions be taken separately. I make a motion to that effect. The question, on this motion, was put and decided in the affirmative.

The question having been taken *seriatim* on the first two resolutions, they were agreed to.

Before taking the question on the third resolution—

Dr. PEET said: I do not know that I have any objection to that resolution. Under the circumstances of the case, it seems to me to be the only plan that we can adopt, inasmuch as if another plan should be subsequently adopted, it will be necessary to make inquiry of the several Institutions regarding it. I would have preferred that the Convention should appoint the editor itself, rather than throw the responsibility of this matter upon the Executive Committee; still, for the reason which I have already stated, it seems to me that this is the only practical method that we can adopt at this juncture, with a view to secure the greatest amount of efficiency in the publication of the *Annals*. I am therefore in favor of the resolution.

The question on its adoption was then put and decided in the affirmative.

The fourth resolution was then read, and before the question on it was put—

Dr. PEET, said: I suppose that if we should have a Convention next year the word "or" in the last line of the resolution would be applicable; but if it should happen to go beyond two years, the word "and" ought to be substituted.

I move to amend the resolution by substituting "and" for "or" in that part of the resolution so as to make it read "for two years *and* until the meeting of the next Convention."

Mr. COOKE. I understand the effect of that to be, that this arrangement shall continue for two years, or until the meeting of the next Convention.

Dr. PEET. In 1853 we agreed to meet here two years subsequently. In consequence, however, of the breaking out of an epidemic in this town, the Convention had to be postponed a year longer. My object is to provide for a similar contingency.

Mr. COOKE. If you use the word "and," it will continue for two years whether we have a meeting next year or not.

Mr. TALBOT, suggested that the resolution adopted at the last Convention would be appropriate in this instance. He thought that by striking out the words "for two years or" the object contemplated would be effected. He offered that as an amendment.

Mr. MACINTIRE, who submitted the report, was willing to accept that amendment. He remarked that the best course, in his estimation, was to empower the Executive Committee to act until

the meeting of the next Convention, leaving them to continue these powers if they thought proper.

MR. KEEP. It seems to me that the suggestions made by Mr. MacIntire are good. I think this arrangement should be continued, until otherwise ordered by the Convention.

MR. COOKE. Suppose the Board of Directors agree to enter into this arrangement for two years. Meanwhile, a new Board may come in, and the present cannot, of course, compel them to continue the arrangement, as at first entered into. I think the better way would be to continue this committee until the meeting of the next convention.

MR. PORTER. Would it not be well for the committee to make arrangements, at first, for a definite number of years—say two years—after which they should have power to make arrangements anew.

DR. PEET. I think the substitution of the word *and* will accomplish all that.

MR. TALBOT withdrew his amendment, Mr. MACINTIRE concurring.

MR. COOKE. I understand the effect of Dr. Peet's amendment to be the continuing of this arrangement, until the next meeting of the Convention, even though that should not be in two years.

The question on the adoption of Dr. Peet's amendment was then put, and decided in the affirmative.

The resolution, as amended, was then adopted.

The fifth resolution was also adopted.

MR. DUNLAP offered the following resolution :

*Resolved,* That the Deaf and Dumb of other parts of the United States, as well as of the New England Gallaudet Association, be invited to use the American Annals of the Deaf and Dumb, as a means of communication; and that the Executive Committee be instructed to furnish the Annals to them on as liberal terms as they may deem practicable.

MR. PEET. That contemplates the extension of an invitation to individuals in other States. I believe there are no Associations of the Deaf and Dumb out of New England; and the committee to whom this matter was referred, thought that it would be right and proper, inasmuch as they are an associated body, that we would authorize the issuing of a sufficient number of the Annals to meet their wants, at a *pro rata* consideration. It

would hardly be practicable for the Executive Committee to make deductions to individuals in other States. The publication is open to contributions from all persons; so that I think it would not be well to get them to accede to the proposition made in the resolution.

Mr. DUNLAP. This Convention invites the Deaf and Dumb of the New England States to contribute to this work. I think, therefore, that we should be courteous enough to invite the Deaf and Dumb of other States to use the Annals as a means of communication.

Mr. TALBOT. I would like to inquire if this matter is not already settled. I noticed, in the last number of the Annals, communications from the Deaf and Dumb of other States and other Institutions, than those in New England. I noticed a communication from a pupil in the Indiana Institution, and, at least, two other communications from the Deaf and Dumb out of New England. It seems to me that the Executive Committee and the Editor of the Annals have thus far kept it open to the reception of every contribution. I do not see that anything will be gained by the adoption of the resolution, inasmuch as the Deaf and Dumb of the whole country are already practically invited to write whatever is proper for the Annals.

Mr. KEEP. I think it would be well to extend an invitation to the Deaf and Dumb of the country. It would do no harm, and might prevent misconception.

Mr. MORRIS. I shall move an amendment to that resolution. I think, with Mr. Keep, that it would be proper to invite these communications without referring to the terms to be charged. I move to strike out all after the word "communication." The amendment was adopted.

Mr. MACINTIRE. I move further to amend the resolution, by substituting the words "are hereby," for the word "be," so as to make that part read "as well as the New England Gallaudet Association, *are hereby* invited," &c.

This amendment was also adopted.

The question on the adoption of the resolution, as amended, was then put, and decided in the affirmative.

Dr. PEET, from the Committee on the Organization of Institutions, submitted the following Report:



The committee to whom was referred the resolution in the words following, to wit:

*"Resolved, That a Committee of Three be appointed to take into consideration the subject of the Organization of Institutions for the Deaf and Dumb, with a special reference to their internal arrangements, and report to this Convention:"*

Have given to the subject, as far as the time allowed to them would permit, the consideration which its importance demands; and now submit the following

### R E P O R T :

The laws by which the American Institutions for the Deaf and Dumb were created, have committed their management to Boards, variously designated as Directors, Visitors, or Trustees, which Boards are empowered to make by-laws and internal regulations, and to appoint and remove teachers and other employees. In most cases, however, these Boards practically limit their action to confirming or disapproving the regulations proposed and nominations made by the Principal or Superintendent. And your committee submit, that as the highest efficiency and prosperity cannot be attained under a divided head, this general practice ought to be made a positive regulation, for the following considerations :

The Boards in question, composed of men selected for their general intelligence, benevolence, leisure and influence in society, seldom are, and seldom can, be expected to be conversant with the numerous and peculiar practical details of the management of an Institution for the Deaf and Dumb. Men enough, with a sufficient stock of that practical knowledge, and with the other requisite qualifications, including an ability to devote time to benevolent labors without compensation, can hardly be found in any place to constitute a Board of Management. And the frequent changes which these Boards undergo, changes in some cases prescribed by the laws creating the Institution, will prevent their members from acquiring the thorough practical knowledge necessary to entitle them to interfere, in opposition to the judgment of the Principal, in the internal affairs of such an institution. They are qualified to judge of results, but seldom able



to prescribe details of internal management. This should be the office of the Principal or Superintendent. The Principal, it is to be presumed, will be a man both of experience and reputation in his profession. He will be able to propose regulations already approved by the experience of similar Institutions, with such modifications as his own experience and reflections may suggest. No one will maintain, that if the Principal is at all qualified for his important position, the Board will be likely to know, as well as he, what the best practice of other schools is, or to be as able to suggest judicious changes. As the Board are responsible to the Legislature and the public, so the Principal is responsible to the Board. As they would be justly censurable in committing so important a trust to any but a man of tried and approved talents, character and experience, so they would be equally censurable, if, after appointing such a man, they should thwart and control his action in such a way as probably to diminish his zeal and efficiency. If they cannot trust him fully, they ought not to have appointed him. If the results of his management are unsatisfactory, they can, after a fair trial, remove him. But while he holds his post, he ought to have powers proportioned to his responsibility. His stake in the success of the Institution is much greater than that of the individual members of the Board. They can retire at any time, as a mere declination of unpaid labor; his retirement, if notoriously on the ground of mismanagement, or ill success, affects both his character and means of living.

As the Principal or Superintendent is thus practically the person most responsible for the proper internal management of the Institution, justice requires that he should have the nomination (subject, of course, to the approbation of the Board) of the assistant teachers and other employees, by which the details are to be carried out in practice. He is evidently better qualified than the members of the Board can be to judge of the peculiar qualifications required in his own profession; and every one who has had experience, whether as principal or assistant, in the management of an educational Institution, must be aware how important mutual confidence and cordiality of feeling between the gentlemen employed is to the prosperity of the establishment. This confidence and cordiality can only be secured by giving the Principal the right to nominate his subordinates.

Another important consideration is, that there can be no uniform and consistent course of instruction in a given Institution, unless the head of the Institution has authority to prescribe the general course of lessons, and has both authority and inducement to spend time in the different classes to observe the practical workings of the system, and lend the aid of his judgment and experience where difficulties arise. Manifestly, this would be virtually impracticable, if the assistant teachers are made independent of the Principal, by holding their appointments directly from another and higher source. The condition of the Institution of Paris is an example in point.

And if report speaks truly, there have been examples quite recently nearer home, in which, by the interference of the Boards of Trustees with the proper duties of the Principal, the affairs of more than one Deaf and Dumb Institution have been deranged, depriving them of the services of able and experienced men, and causing many Deaf Mutes to lose, by the derangement and delay thus induced, the precious opportunity of acquiring a good education.

The only objection which your committee anticipate to these views is, that in one Institution, the internal management is under the control of a *Faculty* of the teachers, modelled on the plan of government prevailing in our Colleges. Your committee do not doubt that the Principal may derive many useful suggestions from the advice of his experienced and judicious assistants. A general, however skillful and experienced, and however exclusively invested with the supreme command, still, in emergencies, seeks the advice of his council of war. Still we urge that the power of ultimate decision should be where the responsibility is, and that the best results may be looked for where the Principal, while provided with competent advisers, is still capable of judging for himself, and empowered to act on his own judgment.

For these reasons, the committee believed that the Principal or Superintendent, or whatever may be the designation in each case, of the immediate executive head of the Institution, while holding his own appointment immediately under the Board of management, responsible to them, and liable to their veto on his nominations, should, under this restriction, be formally empowered by their *By-Laws*:

1. To nominate all his subordinate officers and employees.

2. To make regulations of internal police.
3. To be the sole official medium of communication between the Board and the persons in the different departments of the Institution.
4. To authorize all the purchases of ordinary supplies, and to examine and certify to the correctness of bills for such supplies, to be paid by the Treasurer.
5. To have the exclusive direction and control of the system of intellectual and religious instruction.

All of which is respectfully submitted.

H. P. PEET, WM. D. COOKE, THOS. MACINTIRE,	}	<i>Committee.</i>
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STAUNTON, *Aug. 15, 1856.*

Dr. PEET. This report was rather designed to embody principles than to carry out the whole thing in detail. There is no time to go into an argument in regard to these principles; and the probability is, that this will not meet the views of all of the Convention. At the same time, it is believed that authority ought to be invested either in an individual or faculty, in the matter of appointments. This principle would be the same as that observed in other cases; but when the laws or the trustees of an institution vest the executive authority in the Principal or Superintendent, it is perfectly proper that he should be clothed with power to carry out everything necessary to the successful administration of the affairs of the Institution.

Mr. STONE. I trust the report will meet the unanimous approval of this Convention. It lays down correct principles, in my judgment, on a very important subject. There are some subjects that can be understood only in the light of experience, but this seems to be one concerning which even the bitter lessons of experience have in numerous cases been unheeded. In the first Institution that was established in the country, the great mistake was made of placing the domestic department under the charge of one person, and the intellectual under another. The person appointed to take charge of the family—a very worthy and excellent man in his proper place—claimed that he had the sole control of the pupils out of school, and could make such arrangements as he pleased, and that the authority of the Prin-

cial, Mr. Gallaudet, was confined to the duties of the school-room and the system of instruction. The result of this conflict of jurisdiction was a state of insubordination, disorder and confusion among the pupils, that came near breaking up the school. After a short trial of the beauties of this arrangement, the system of government was adopted, in which the control of every department of the Institution was vested in the Faculty. Now, I affirm, without the least hesitation, that no man, whatever his other qualifications may be, can control a family of Deaf and Dumb children, without such an acquaintance with the language of signs as only a practical teacher can acquire.

Gentlemen who may be appointed in different States as Boards of Trustees to start new Institutions for the education of the Deaf and Dumb, need information as to the best method of organization. The adoption of this report, as presenting, in the judgment of this Convention, the best possible method, with the lucid and strong reasons there given for such an opinion, will have great weight, and render essential service in such cases. I move the adoption of the report.

Mr. MACINTIRE. I am much pleased that this subject has been brought before the Convention; and I regret that the shortness of time remaining for our sitting will not allow it to be more fully discussed. It is especially important that new Institutions should be commenced properly. Errors committed here are hard to be eradicated. The powers and duties of the trustees, of the executive, and of the subordinate officers, ought to be clearly defined and definitely settled, so as to secure the greatest amount of good. I contend that this can only be done by an organization based upon the principles laid down in the report just read. These principles meet my most hearty approval. The system of organization and internal economy set forth is exactly such as has been in operation for the last four or five years in the Indiana Institution. It is a system that was worked out after long trial and much painful experience. In the outset, the same errors were committed that have been common to other Institutions of the kind, and the same difficulties experienced. The grand error, however, committed was, the making of the steward, teachers' matron and employees, as well as the superintendent, directly responsible to the trustees. Under this arrangement, no proper subordination nor harmony could be main-

tained. The plan was tried, under a great variety of modifications, but with the same result. Finally, however, the Board adopted and ordained, as fundamental principles: That the Superintendent should be directly and solely responsible to the Trustees for the management of the Institution in all its departments. 2. That he should have the power to select and nominate all the subordinate officers, teachers and employees. 3. That he should be the sole official organ of communication between the Board and the Institution. So essential was the second of these principles deemed, that it has been enacted into a statute law of the land. An Institution for the Deaf and Dumb, conducted upon these principles, will secure the highest degree of order, harmony and efficiency. Violate any one of them, and it matters not what the circumstances may be, evils must ensue.

This plan cuts off all out-door interference; for the Trustees, in their individual capacity, have nothing to do with the Institution. They can only act in their organized capacity. If these principles be violated, and each member of the Board be allowed to transact business in his individual capacity, and interfere in the government and management of the internal affairs of the Institution, a multitude of evils would arise: for instance, some subordinate does not agree with the executive, and he goes to a trustee and confers with him, representing of course his case in the most favorable light, and thus rendering him his partisan. He goes, in turn, to another and another, until he prejudices the minds of the whole number, and at the meeting of the Board they are all pitted against the Superintendent.

My experience has been as varied, if not as long, as almost any one present. I have been connected with three Institutions of the kind, and have acted under more than half a dozen different Boards of Trustees, and almost every form of government. I have seen, that in every instance when the principles laid down in the report have been acted upon, the results have been good; and in every instance, on the other hand, in which they have been departed from, evils have arisen; and I will venture the assertion, that no other Institution has, for any great length of time, prospered, which has not practically, if not in theory, been managed in this way. Here, and at Hartford, I understand, the practice to be very similar to the plan recommended in the re-

port. The Principals select their subordinates, transact with the Boards all business, and control all the internal affairs of the Institution. But this is not enough; these powers ought to be conferred on the Superintendent, not as a courtesy, but as a right—ought to be settled as principles, and enacted into laws, as they are in Indiana, and thus placed beyond the reach of mere caprice.

Mr. PORTER. The plan of organization set forth in the report differs somewhat from that adopted in the American Asylum. It gives no power to the Faculty, as I understand it.

Dr. PEET. I said it embodied the principle, whether the executive power is vested in an individual or a Faculty.

Mr. PORTER. I understand the report, as it reads, to be against the Faculty system. That system I deem preferable to the one recommended in the report. I admit, indeed, that there are occasions, as, for instance, cases of discipline, requiring summary action, in which there will sometimes be found an advantage in having the whole power wielded by one man. But, on the other hand, it is of great importance to have some check against hasty and imprudent measures, even in cases of discipline. Such a check is secured by requiring the deliberation and concurrent action of a whole Faculty.

I admit, also, that the Principals of our Institutions are generally men who may be safely entrusted with large powers; but absolute power in the hands of one man is certainly liable to be abused at times. It is therefore wise to impose such limitations as are compatible with a due regard to efficiency.

There is an advantage also in having the assistant instructors share the feeling of responsibility for and consequent increased interest concerning the general management of the Institution.

Dr. MERILLAT. I never understood that there was an Institution in the United States organized upon that principle. I would desire to know from the gentleman (Mr. Porter) what are the powers of the Faculty, and what is the nature of such an arrangement.

Mr. PORTER. In the American Asylum, the Faculty make all regulations pertaining to the internal government of the Institution. The steward and matron are, in all such matters, subject to the direction of the Faculty. In the financial branch of his department, the steward is not accountable to them, but to the

Board directly. The hours of instruction, study, work, recreation, meals and sleep, are prescribed by the Faculty; and they make such other regulations in regard to all these matters as they judge expedient. The Principal is bound to carry into effect the rules enacted by the Faculty. He is required, also, to submit to the Faculty, for adjudication by them, all important cases of discipline for offences against the general rules and order of the Institution. The Faculty at Hartford is composed of the hearing and speaking instructors, and no others, except Mr. Clerc.

In one matter the Principal is invested with full power. He has the entire direction of the method of instruction and the course of study to be pursued in the several classes. The arranging of the pupils in classes, and the assigning of classes to teachers, have also, by vote of the Faculty, been committed to him, but could at any time be recalled.

Mr. STONE. I would add to what has been said, that the Principal at Hartford is the executive head of the Institution, and that he has a veto power over the acts of the Faculty.

Mr. PORTER. That is correct. The Board of Directors also have the power of reversing the acts of the Faculty.

I may add, that the arrangement now existing under our present Principal is such that he is also the responsible head of the steward's department; but this does not affect the powers of the Faculty.

Mr. DUNLAP. This subject of organization has caused more trouble in our Institutions than has arisen from any other source. There are various causes for this, and, perhaps, the greatest is, unreasonable interference of the Board of Trustees with the internal affairs of the Institution.

I agree in the main with the views set forth in this report, but am not in favor of its adoption under its present form.

That the Principal should be the immediate executive head, and the final judge in matters of great responsibility, coincides entirely with my views; but that he should be the ONLY MEDIUM of communication between the Board and the persons in the different departments of the Institution—that he should have the *exclusive dictum* in regard to the system of instruction and internal police, seems to me is clothing the Principal with excessive authority. If a difficulty occur between the Principal and a



teacher, the Principal can have him removed from the Institution, and he has no means of redress. Such authority is degrading to the teachers, and ignores that great law of jurisprudence which is so highly esteemed by every free people, namely, a fair hearing before our compeers. How is the Principal to direct properly the intellectual system of instruction, especially, if he does not visit the school-rooms six times in a whole year? and is busily engaged most of the time with the shops, the garden, the farm, or *selling three cent post stamps*—in short, absorbing into himself steward, farmer, gardener, master of shops, &c. If the Trustees impose these things upon the Principal, they are doing the Institution a positive injury, and overstepping their legitimate sphere, and embarrassing the progress of the Institution.

I believe the faculty system is entirely the best, and would prevent much trouble and dissatisfaction which often arise in our Institutions, on account of the inequality, injustice, and, above all, the inefficiency of the laws.

I once expressed this opinion to one of my colleagues, and he laughed at the idea, saying that I stood in a hopeless minority in this view; but I am glad to see that I do not *now* stand alone in this opinion.

I cannot understand the principle of ignoring the teachers in matters, in which, it is supposed, they have as deep an interest as the Principal. What is the advantage of calling men of education, ability and experience to the office of teacher, if they are not to be consulted. Let the teachers have a voice in the law-making department, at least, where these laws have reference to their duties, and it will, doubtless, have a wholesome restraint, and make the laws more perfect and efficient. The principal does not always know the practical bearing of a law which he makes, for he cannot be with the pupils long enough to know its operation, and often does not feel that concern about its inefficiency that the teacher does, for he is comparatively removed from its annoyance. If a law is unjust in its operation, impracticable, and inefficient, and the teacher enters complaint to the principal, and is not heard, it cannot be otherwise than that dissatisfaction will arise; and when that is the case, no such law can be carried out.

It is reasonable to suppose, that, if the teachers had a voice in the internal police, that they would, also, be more vigilant to



see that the internal regulations of the Institution were strictly observed.

Perhaps the best plan for the government of an Institution, *is*, to put the whole authority in *one*, make his *will* the law ; but I would suggest, however, an addition to the report: that is, that no principal has the *moral right* to decree any law which meets the disapprobation of his teachers.

Mr. KEEP. The evil to which I suppose the report is mainly directed, is that of having one head over the intellectual department and another over the steward's department. Whether the principal is under the control of the Faculty or not, does not seem to me a matter of very great consequence; for if the teachers are all such men as they should be, and the principal such a man as he should be, even if he occupies the position, not only of executive head, but of legislative head of the establishment, he will do nothing upon any important occasion without taking the advice of the teachers. If unfortunately he should be ignorant, overbearing and arrogant, and believed his importance to consist in doing everything himself, it would be a calamitous administration to live under.

I myself have a preference for the Faculty system. Let there be an executive head; let the administration rest mainly with the principal; but let the laws be made by the associated heads of the Institution.

Mr. STONE. I would not only have good teachers and good principals, but I would have a good system. If one Board chooses to organize by placing the power and control of the Institution in the hands of one man; and if another Board, deeming that inexpedient, should choose to adopt another system, and place the power in the hands of the teachers, I grant that it is a matter of comparatively little consequence, provided we have good principals and good teachers. I have acted under both systems. For nineteen years and a half, I was connected with an Institution where the power was vested in the Faculty; and I have also acted under the former system; and my experience in both leads me to agree with the gentleman who has just spoken, (Mr. Keep,) that while it depends very much upon the persons employed, how either system will work, yet that placing the control of an Institution in the hands of one man, is the true principle after all. In this way you will have some re-

sponsible head to whom the trustees and the community will look for its proper management. The Superintendent should be that person, and he should be constituted the medium of communication between the subordinate officers and the Board. I can not assent to the propriety of a Board of Trustees assuming to remove a teacher or a steward without the consent of the Superintendent. I think that by appointing him as head, and holding him responsible for all that takes place in the Institution, the machinery will be found to work more efficiently. I appreciate as highly as any one the value of the experience and counsel of those associated with me in this employment, and I have no doubt, that any man constituted the head of an Institution, would, as a matter of privilege, take pleasure in conferring with those associated with him, when determining upon any important step. In my judgment the system pursued at the Hartford Institution is not the best. It is better to have one responsible head than eight—for the more you divide responsibility the less tangible it becomes. It may be said, that it is dangerous to put this power into the hands of one man. It is not, if you get a proper man. A man who is not qualified, or is not suited to his place, will make trouble in any position.

Dr. PEET. The system of having the Faculty to make the laws for the government of any particular Institution, it is found necessary to modify in the only Institution in which it exists; for instance, persons only who are capable of hearing and speaking are members of the Faculty. Mr. Clerc is, by special law, an exception to this rule. Here are persons who may be as intelligent as any others excluded from the Faculty. Since the Deaf-Mute Instructors are excluded from the Faculty, it seems, they have not quite confidence enough that this system would operate well. It seems, that under the system which has been adopted, the Faculty must be reduced to a certain select number, to the exclusion of others no less qualified to discharge the duties of that position. As has been remarked, no Superintendent would ever think of making out a system of internal policy, without the advice and co-operation of those with whom he is associated. But there must be a concentration of power somewhere. This principle is observed in the Hartford Institution; because it is understood that this power would be better executed by one than by eight. After all, it is a mixed government of one man

and several men; for the opinions of all are canvassed upon every important question. It seems to me, therefore, that it would be carrying out the idea with greater efficiency, to have the power concentrated in one, as it is in all Institutions where the principle of concentrating power at all exists. The young Institutions have suffered exceedingly for the want of a proper system in their management; and the evil has grown out of the fact, that the appointing power had been vested with an association, and not with the Superintendent individually. Their right to appoint a steward, for instance, rendered him directly responsible to them, and not to the Superintendent. If the Superintendent shall be held responsible for the administration of the affairs of the Institution, it seems to me, that it is right he should have control over those who have to co-operate with him in the administration of those affairs. I have no disposition to find fault with the system as it exists at Hartford. I think it has some advantages; but I will say, that the government of an Institution will work badly, if there is not a disposition to yield something and to take something. The best system in the world will prove useless, if there is not a disposition to carry it out. The adoption of the plan, suggested in the report, will not diminish the powers of the Board. All power is vested in them by the law, and they hold the individual whom they appoint, responsible for the administration of the affairs of the Institution.

Mr. PORTER. It is true that the responsibility might be vested in the Superintendent with all propriety; but it is certain that he cannot himself do every thing that is to be done in each department. He cannot, for instance, do or direct all that is to be done in each of the school-rooms. Why, then, should he direct all the details of the steward's department? If the steward should make the expenditures, he would take a good deal off the shoulders of the Principal, and leave him more time for the duties proper to his own department—duties pertaining to the instruction and training of the pupils.

Dr. PEET. I will illustrate the manner in which bills and accounts are made out in the New York Institution. We have a book properly headed, which may be called a book of "wants." In this is written every week whatever is wanted for the week. The Executive Committee, which consists of three members of

the Board, and which meets once a week, authorizes the purchase of these articles. The next week, bills for these purchases are submitted to that committee, and they examine and audit them. If the President of the Institution chooses to pay a bill, all that is necessary is to give the name of the individual and the articles furnished in the bill, and thereupon they draw an order on the treasury for the amount, in the same form as of a bank note, signed A, B, C, Executive Committee. The bills are payable to order, as other endorsements.

MR. MACINTIRE. Is not the President the chairman of the Executive Committee?

DR. PEET. He is a member of the committee.

The President of the Institution is held responsible for this expenditure. He performs this task, in a great measure, through his steward, whose duty it is also to make an examination of each bill. The steward signs it, or hands it to me, as the case may be. It is then ready to be audited by the Executive Committee. The Executive Committee authorize purchases to be made. The wants are put down by the steward, and approved by the Principal.

MR. COOKE. Has not the President the power to strike out any article that is not necessary?

DR. PEET. Certainly.

MR. PORTER. The system adopted at Hartford was borrowed originally, if I am not mistaken, from our Collegiate Institutions. The government and discipline of our Colleges are not entrusted to one man, but vested in a Faculty, consisting of the President, Professors, and Tutors. This plan has been long tried, and found to work well. The reasons which make this system the best in the one case, will hold good in the other. If there would be danger in conferring the whole governing power upon the head of a College, it would be the same in the case of an Institution for the Deaf and Dumb. It certainly will not be pretended that the instructors in our Institutions are not competent to bear a part in their government.

MR. MACINTIRE. The financial system of our Institution in Indiana is somewhat peculiar. The trustees have very little to do with the funds. The responsibility of their management is placed almost entirely upon the Superintendent. The support of the Institution is provided for in the constitution of the State,

and all the expenses are made payable out of the general fund, the same as are the expenses of the legislative, judicial, and executive departments of the government; so that its support is placed beyond the caprice of future law-makers. The Superintendent decides on all purchases, and certifies all accounts. As often as money is needed, an estimate is made out, and presented to the Auditor of State, who issues his warrant for the amount, on the Treasurer of the State; the money is drawn and deposited in bank, and checked out as occasion requires. The amount drawn at one time varies from one to six or seven thousand dollars. Once in six months all the bills, which have been paid, are surrendered to the Auditor, who files them, and at every session of the General Assembly lays them, in common with all the other State accounts, before the Finance Committee of that body. I thus allude to this system, not for the purpose of recommending it to any one for adoption; for I do not by any means consider it a good one. It is simple, and I must say, that during the four years in which it has been in operation, there has not been the slightest difficulty. But it is loose, and not sufficiently guarded against abuse. The trustees meet but once in three months, and take no cognizance of the expenditures, either to approve of estimates, or sanction purchases. This responsibility is thrown upon the superintendent. I would much prefer a plan similar to that practiced in the New York Institution.

Mr. WALKER. I have no desire to say much upon this subject, but I simply wish to bring under the notice of my brethren in the profession what has been the result of my experience in the management of an Institution. I have accomplished more than my most sanguine friends could have expected. This, I have no doubt, is owing to the full concentration of my energies for the accomplishment of the duties assigned to me. I am never haughty or overbearing in enforcing the rules of the Institution. I feel justified in stating, that the concentration of power, upon the head of the Institution, is the best means to secure efficiency in the management of its affairs—such at least is my experience. I have been at one or two Institutions in the South, in each of which I observed some little distraction from the want of such a principle for their government. I went to the Tennessee Institution, and found my friend Mr. Morris, then superintendent of it, covered up in dust and not likely to last

long. He left soon after. I think the best plan is to concentrate the power in the hands of one, imposing upon him such checks as would be deemed necessary and pertinent.

Mr. SKINNER. (Surrendering the chair temporarily to Dr. Peet.) I should like to say a few words with regard to one feature of the report. In the general I concur in the views therein presented, and think the system recommended, with but one exception, the best that could be adopted. The exception I take is to that feature which proposes that all the subordinate officers shall be appointed upon the nomination of the Principal. I do not think that this plan is the most proper, or at all necessary to the successful conduct of an Institution. In this (the Virginia) Institution the Principal has no nominating voice in the appointment of the several officers and teachers therein employed. The Board have an *unrestricted* power of appointment; and, in my opinion, this is as it should be. Under the plan proposed, the Principal, should he entertain a prejudice, small or great, against a particular applicant, would refuse to nominate him, and, in such event, the Board, whatever might be their opinion of the character and qualifications of the individual, would find themselves unable to appoint him. Where the range of selection of the Board is, from the peculiar qualifications requisite in a teacher of Deaf Mutes, necessarily limited, I am opposed to restricting it still further by investing the Principal with the intermediate power of nomination. In making a selection of officers every honest and discreet Board will always ask the opinion of the Principal with regard to the person under consideration, and if he should show any good ground of objection to such person the Board would, of course, be governed by it. In this Institution the foremen of the shops are appointed by the Board or Executive Committee, upon the nomination of the Principal; beyond this, and the selection of unofficial employees, the power of the Principal with us does not and, as I think, should not go.

Mr. S. here resumed the chair.

Mr. STONE. It is entirely impossible to carry out the plan of making the Superintendent responsible to a Board for the proper management of an Institution, while the Board exercise the power of appointing the subordinates irrespective of his judgment and wishes. The case is certainly supposable that a Board should appoint a person to some office who is decidedly objec-

tionable to the Principal; and then how will you secure harmony and co-operation? I have heard of an instance, in which a person applied to a principal to be employed as a teacher, but, for good reason, the principal declined to engage him. He went to the Board, and as some of the members were his personal friends, he was immediately employed.

This allowing the Superintendent the privilege of recommending persons who are suitable to fill offices in the Institution, of which the gentleman seems to be so much afraid, is no great matter as far as power is concerned, for the appointing power remains with the Board. The Superintendent himself is entirely in their hands, and can be held responsible for misdemeanor in this, as in any other duty assigned him. Besides, he is the proper person to make the selection of persons to be employed, as he only can judge whether an individual does, or does not possess the qualifications which are indispensable in a teacher of Deaf Mutes. The gentlemen who are placed on Boards of Trustees, have occupations of their own, and generally have neither sufficient leisure nor familiarity with the subject to decide upon the suitability of applicants for office. They are liable to be influenced by political considerations in making their appointments; for, however honorable and fair-minded they may be as men, they frequently receive their office from a particular party who expect and demand that they shall use their influence to advance the interest of the party, let the interests of the Institution suffer as they may. The Superintendent is much less exposed by such influences. His reputation and his personal interests are involved in the prosperity of the Institution under his charge. He has every thing at stake, and is much more likely to consult solely the good of the Institution in his nominations. I contend that if you place upon the Superintendent the responsibility of managing the Institution in a proper way, you should give him a chance to do so by giving him a voice in the appointments.

Mr. SKINNER (Dr. Peet occupying the chair temporarily) said: The gentleman who has just taken his seat seems to think that all the officers should be appointed upon the nomination of the Principal. His reasons are not satisfactory to my mind; for it appears to me, that if the Board are competent to appoint the Principal, they must be equally competent to appoint all the of-



officers subordinate to him. In this Institution, it is made expressly the duty of the Principal, by the by-laws, to report to the Board or Executive Committee every official delinquency on the part of the subordinate officers. When such report is made the Board must act upon the case as the interests of the Institution seem to them to require.

MR. STONE. That makes the subordinate responsible to the Board and not to the Superintendent.

MR. SKINNER. I think not. The Principal is the supervisory agent of the Board, and the responsibility of his subordinates to him is, in my opinion, sufficiently established by making it his duty to report their non-feasances or mal-feasances. If an officer is reported and the Board say that his conduct or want of fitness is such that he cannot remain longer in the Institution, the Principal will have done all that could be required of him. If the Principal should however know of any delinquency, and fail to report it, he would thereby make himself responsible to the Board. If this system be not sufficient, you must, in order to make the inferior officers completely responsible to the Principal, invest him with an absolute power of removal, which might lead to a most injurious despotism.

The gentleman thinks that the Principal should be invested with the nominative power, for the reason that the Board might be improperly biased in their selections. But the Principal, who is the appointee of the Board and holds his office at their pleasure, either would or would not, in his nominations, thwart their inclinations; if the Board were men of character, their dispositions would always be correct, and there would be no necessity for this power in the Principal; if the Board were under corrupt influences, and the Principal should make opposition, they would find some pretext for removing him; if he did not oppose them in the case supposed, there would be a sacrifice of honesty on his part. I am not willing to subject the virtue of men to such tests. But if political or sectarian considerations are improperly to have weight in appointments, are they less likely to influence the Principal in his nominations than they would the Board if he had not this voice? The Principal must inevitably be inclined to some one party or belong to some one sect, while in the Board composed of several, there may be diversity. The Boards are generally appointed by the Governors of the States,



and they, owing a responsibility to the people, would not dare to appoint all the members from any one sect. For these reasons, among others, I am adverse to the feature of the report upon which I have commented.

MR. PORTER. It is obvious that the Board, having supreme power, could dismiss the Superintendent, in case he should act unreasonably in the exercise of the right of nomination. The Board are not so much concerned in the success of the Institution, as is the Superintendent, and are thus more likely than he to select unfit persons. They may be appointed by a political party, and come in and go out with the party. At all events, they do not feel that interest in the Institution that the Superintendent does. From his relation to the Institution, and his interest in its welfare, he would be more likely than they to be influenced, in the selection of his subordinate officers, by a regard to the best good of the Institution.

There is another reason why the power should be in the hands of the Principal. He alone is the competent judge whether persons are qualified for the positions to which they may aspire; such, for instance, as the position of assistant instructor, and other important subordinate positions in the Institution; and he judges with reference to considerations, which the Board cannot fully appreciate. The moment he sets his eye upon a man, he may form a judgment—in some cases, a decisive judgment—as to his fitness or unfitness to be an instructor of the Deaf and Dumb. Yet he might find it a difficult, and certainly a delicate task to state his objections, so as to satisfy the Board. I do think it *very* important that the Principal should have the right of nominating his subordinates.

MR. SKINNER. The gentleman who has just spoken thinks that the Principal ought to have the nominating power, but maintains that the Board ought to have the power to dismiss him. Then they may dismiss the Principal for refusing to nominate whom they please. I repeat, that I am not willing, by conferring this power upon the Principal, to subject his virtue to such a test. Besides, it is more proper that the Principal should be subject to the Board, than that the Board should be controlled by the Principal. The Principal has now the privilege of giving advice, and every judicious Board would always hear it, and would, in all probability, be governed by it in nineteen cases out

of twenty. I have no objection to the gentleman offering a resolution, "that, in the opinion of this Convention, the appointing power, in the selection of Boards for Institutions for Deaf Mutes, should not look to the peculiar religious or political opinions of its appointees;" but I do contend that the granting of power to the Principal, to the extent of coercing the Board to appoint none but whom he may nominate, would be most unwise. Let the Board select whom they think best—after first hearing the recommendation and advice of the Principal—and then hold the Principal responsible for the performance of their duty by the subordinates. If the subordinates fail in their duties, let the Principal report them to the Board, and thus discharge himself from responsibility. If, on the other hand, he shall fail to report any official unfitness or delinquency, let the Board hold him responsible. But there is another reason, which occurs to me, why this nominating power should not be conferred on the Principal, which is this: He would feel greater reluctance in turning to the Board, should his nominee prove unfit, and saying to them, I nominated a person who was unworthy of the position, and I desire his dismissal.

I am satisfied, after due consideration, that the appointing power should rest with the Board, independent of any influence on the part of the Principal, except to the extent of advice and recommendation.

Mr. S. resumed the chair.

Mr. MACINTIRE. The gentleman, who has just taken his seat, objects to placing in the hands of the Superintendent the power of nominating his subordinates, on the ground that it would subject the Board to his control. I do not so understand it. Does the constitution of the United States subject the Senate to the control of the President, because it confers upon him the power to nominate those associated with him in the executive department of this government? Not at all; nor does it in this case. It only assigns him a duty to perform, for which he is better qualified than the Board possibly can be; for it is presumed that the Superintendent understands the system of instruction and the qualifications of teachers, and it is only asking him to use this knowledge, which they grant him to have when they appoint him, in selecting and bringing before them the proper persons, whom they confirm or reject, as they see fit. In our Institution, in

order that the Superintendent may use all caution in the selection of persons to fill vacancies, he is not allowed to nominate but one person to a place. If his nominee is rejected by the Board, then the Governor shall nominate; and if his nominee be not acceptable, then the State officers, in conjunction with the trustees, elect by ballot a person to fill the vacancy. This precaution I do not consider necessary; but some such an arrangement would obviate the objection of the last speaker. In our case, we never have had to resort to such a contingency. The nominations of the Superintendent, in every instance, have been confirmed by the trustees. Nor do they consider their dignity or authority compromised in the slightest degree by the arrangement. On the contrary, they like it, and think it is the best plan that could be adopted. It relieves them from all trouble and annoyance arising from the importunity of applicants for places. This is no slight matter. Under the old system, according to which the Board elected persons to fill all the subordinate offices, it was a sore evil, and sometimes led to serious difficulties among the members, dividing them into parties, and each party having his candidate. In this state of things, I have known persons put in places, not because they were suited for the positions, but by the adroit electioneering of their friends.

It is confidently asked, are not the trustees as well qualified to elect as the Superintendent? I as confidently affirm that they are not. How can they be? Perhaps, they have never been inside of the Institution before they received their appointment, and but seldom since; and cannot, in the nature of the case, give that time and attention to the affairs of the Institution, as to understand the duties of the officers, so as to decide upon the qualifications of an applicant; whereas the Superintendent, if he be a proper man, is familiar with these things in all their bearings. But, it is said, if the trustees be qualified to choose a Principal, they ought to elect all the subordinate officers. In answer to this, I would say, that a Board of Trustees would act very unwisely, if they should rely chiefly, in this, upon their own judgment. They would certainly act more wisely if they should consult those who have had experience in the management of such Institutions. I speak of State Institutions. How it may be in those which are close corporations, whose Boards have power to perpetuate their own existence, I know

not. But in most of the State Asylums, the Boards are changed every few years. In Ohio, the entire body has been turned out twice within the last five years, and new men appointed in their places. These changes are frequent in most of the Western States, and are brought about often by political influences. In our State, the old Board was legislated out of office three years ago last winter, and new men, with one exception, elected in their stead. Now, when such a state of things exists, it is manifestly better that the Principal should be invested with the power to select his assistants, than that it should be confided to persons with little or no acquaintance with the affairs of such an establishment. There is one other feature of the law for the government of the Indiana Institution for the Deaf and Dumb, connected with this subject, which is worthy of being mentioned. It may be applicable in other localities. The law cuts off from the trustees all patronage. They cannot be pecuniarily interested in the purchase or sale of any article consumed by the Institution. Such a provision of law would not probably be needed where an Institution is located in a large city, and its patronage is but a drop compared with the whole dispensed in the place; but located in a small town or village, whose inhabitants are composed chiefly of mechanics and small traders, and whose Board is made up of men engaged in the industrial employments, such an enactment is necessary to relieve them from the temptation and suspicion of making merchandise of the cause.

Allusion has been made to the Tennessee Institution, and the policy pursued there. I had the honor of inaugurating the enterprise in that State, and of carrying it forward for upwards of five years. During this period, my efforts were mainly directed to the erection of buildings. The school was small, and I acted as superintendent, teacher and steward. The enterprise was new to the Board of Trustees. They knew but little of the wants of such an Institution, and were, consequently, to a great extent, dependent upon me for information, in regard to the system of management. Things moved on smoothly till the buildings were mainly put up, when, for want of funds, the school was suspended, and I resigned and left. When they had so far finished the buildings as to allow of their being occupied, they re-organized the school. Here, the grand error was committed, and here their troubles commenced. The trustees as-

signed the control of the intellectual department to the Principal, and the whole management of the domestic concerns to a person whom they called curator. That is, they created two heads to the Institution, each independent of the other. Harmony was impossible. They might have been possessed of the wisdom of Solomon, and the meekness of Moses, and the result would have been the same. There was clashing of authority at every turn. The fault was not in the persons engaged, but in the system. Mr. Craighead, the curator, now deceased, was a gentleman in every way qualified for the position he occupied, and would have done well, I have no doubt, had his rights and duties been properly defined. Of Mr. Morris it is not necessary to speak. He is too well known to you to need my commendation. With such a system, he found it impossible to carry on the Institution successfully, and resigned. Mr. H. S. Gillet tried with a similar result. At present, Mr. Scott is the acting Principal.

Now, this is a case just in point. Had that Institution been organized on the principles laid down in this report, the fruits gathered would have been very different. Instead of being crippled in all its operations, it would, I have no doubt, have accomplished much more good. Nor is this an isolated case; the same error, as you have heard, was committed at Hartford in the beginning, and so also in Ohio, in Indiana, and in Illinois, and in fact in most of the Institutions of this class with which I am acquainted. If experience has taught anything in relation to the management of these Institutions, I think it has clearly taught that each one should have a head, who alone should be the responsible executive officer, the only organ of communication between the Board and the Institution, and who should have power to select and nominate all his assistants. I know that the possession of this power is not sought after by those who have any experience of its responsibilities for the mere sake of having power. For my part, I care nothing about it; I would rather, if it was for the good of the cause, have it placed in the hands of others. I advocate this system solely because I believe it is the one which will most certainly secure the highest amount of good.

Mr. STONE. I have not been so unfortunate myself as to experience any evil effects arising from the political preferences of the Board of Trustees. In our own State, a law has recently

been passed giving the Superintendent the power of nominating all the officers of the Institution. Previous to the passage of this law, although the members of our Board were all connected with one party, and were men of strong and decided political preferences, yet they were sensible, honorable, high-minded men, and they acted upon the principle which commended itself to their best judgment as right and proper, of allowing the Superintendent to exercise the power of nominating the officers of the Institution, which the law has since conferred upon him. In cases where a Board is composed of different materials, and where party feeling runs high, the evils to which the gentleman has referred are inevitable.

The power of nominating is nothing in itself, but it is very important that the Superintendent should have associated with him persons in whom he can confide, and to secure this he should have the privilege of selection.

Mr. KEEP. If you are so unfortunate as to get a Board composed of ignorant or bad men, you may lay down all the rules imaginable, and they would be of no use. It is a very important suggestion, that as this is a peculiar art, very little understood by the community, it is to be presumed that one who has spent many years in the study of it should know more about the qualifications of those to be employed, than persons who have no knowledge of it. I think Boards of Trustees should give special consideration to the suggestions of Principals on this head. As to power, I think the less we have to do with it, the better. The good of the Institution, and not the possession of power, should be, as I am sure it is, the only governing motive with the Principals in seeking to bring about this reform.

Mr. MORRIS. The gentleman from South Carolina left me buried under the dust in Tennessee, but, thanks to a kind Providence, I have shaken off the load, and am permitted at this time and place to record my vote in favor of the report under consideration. I will not particularize the circumstances that surrounded me there, as they are well known to most of the gentlemen of this Convention, but refer to the principles embodied in the report.

The little experience I have had in the management of an Institution, of some five years, has only confirmed the convictions

of my mind, produced by carefully observing the success or failure of Institutions for benevolent purposes, according as they had been conducted by one head or by many. I presume no one thinks that a superintendent should be above all restraint, and that his will should be the law; but that he should be held responsible to the Board who appoint him for the good conduct of the Institution placed under his charge; and how can he properly be held responsible for the acts of other agents than his own? A judge is not held responsible for the wrong-doing of a constable, who may bind and ill-treat a peaceable citizen, and then bring that citizen before him, although both the judge and the constable were appointed by the same authority, and the latter must obey the former when required.

The nominating power in our Institutions for all subordinate officers should be vested in the Superintendent, that he may control their actions, and that they may feel a sense of responsibility to him, and that he may be the medium of intercourse between them and the Board when necessary.

It is true that the superintendent, influenced by some personal prejudice, may decline nominating an individual who may be deemed qualified by the Board. It is also true, on the other hand, that the Board may appoint a person entirely unsuited for the office to which he is appointed—but the relations of the Superintendent to the Institution, and the responsibility which this appointing power would devolve upon him, would furnish the assurance that in his selection he would be more likely to act with reference to the best interests of the Institution than the Board would, because they are less intimately connected with it; nor are they as conversant with the methods pursued in instructing, or with the wants of those there assembled. The consciousness also that the least favoritism (if any should be felt for a candidate) would be detected by the Board, and the fault recoil upon his own head, would deter him from nominating an improper person.

It was remarked by the last gentleman, that "we cannot expect men always to do as they ought;" we must therefore endeavor to carry out the principles that will best redound to the prosperity of the Institution, whether it be that *all* responsibility rests upon the Superintendent or Principal, or upon the Faculty, one or the other of which is the best course, if we wish to give



the highest degree of efficiency to the Institution. I therefore coincide with the views expressed in the report, as being the best under the circumstances.

Dr. MERILLAT. The report of the committee appears to me to have elicited a diversity of opinion only on three important points:

*First.* Shall the executive control of an Institution be confided to the Principal or to the Faculty? The friends of the latter principle appear to rely upon the prosperity and the eminence which the American Asylum has attained, as a proof of the superior qualification of the Faculty to govern an Institution. I cannot better express to you my views on the subject, than by stating the answer which I am sometimes obliged to make to eulogists of the English language, who, when I point to the comparative poverty of its vocabulary, its want of inflections, the stiffness of its construction, the anomalies of its orthography and pronunciation, &c. &c., exclaim, "but look at its literature! In what other language do you find a Shakspeare, a Milton, &c." My reply is, that if ever I had had any doubts of the intelligence and indomitable energy of the Anglo Saxon race, these doubts would all have subsided upon seeing the works which they have succeeded in accomplishing with such an inferior tool. In the same way, I trust the gentlemen from Hartford will allow me to say, that I always had a high opinion of their ability and of their devotedness to our common cause, but that this high opinion has been greatly increased since I have understood under what system they have succeeded in making their Institution one of the first in the United States.

As to the second question, whether the duties of the Principal should be confined to the duties of the school and of the pupils, or whether he should also have the supervision and control of the household and of the other branches of the Institution, I believe that it is indispensable to the efficiency of the school that the Principal should have the control of all the branches of the Institution. Nobody will deny, that to enable the school to go on pleasantly and efficiently, these secondary branches must harmonize with it; but they will not do so long if persons irresponsible to the Principal have the management of them. I am not much acquainted with the history of Deaf-Mute Institutions, but

I have repeatedly seen the soundness of these theoretical views confirmed by the experience of Blind Institutions. I have seen Institutions which were in a flourishing condition when their respective Principals were the heads of all their departments, sink down to a state of utter inefficiency when the stewards were made practically independent of the Principal, and I have seen the same Institutions rise again when the Board of Directors, seeing the error of their ways, re-established the Principal as the sole executive head.

The third question is, whether the Principal should have the right of nominating to the Board his subordinates. You are well aware, sir, as the President of the Board of Visitors of this Institution, that with us, fortunately, this has never been a practical question; but you also know that I have always held and always expressed the opinion, that the Principal should have that right, and I must add, with all due deference, that your arguments to-day, in favor of the opposite principle, have again failed to convince me. I understood you to urge, and the argument has great force apparently, that as the Board is composed of several members, it is less likely that the same partisan, or sectarian, or other unworthy consideration, will influence a whole Board in making an appointment, than the Principal, who is but one man. This would be so, were they all exposed alike to these extraneous influences. The position which the Principal occupies, in regard to the Institution, differs greatly from that of the members of the Board. He may have as strong political, or sectarian, or personal prejudices, but he has a strong, a paramount counteracting influence—an antidote, if I may so express myself—which they have not; in the fact that his reputation and his personal interest are intimately and directly connected—in fact, are identical—with the reputation and the interest of the Institution under his charge. His interest, as well as his duty, will urge him to appoint only competent persons to office; whilst, on the part of the members of the Board, duty may be, and often will be, pointing one way, and personal interest the other.

Mr. COOKE. I do not wish to take up the time of the Convention, but I desire to express my hearty concurrence in that feature of the report of the committee which proposes to confer the nominating power upon the Principal. An experience of

nine years in one Institution, and two years in another, satisfies me that it is the only system under which our Institutions can prosper.

Mr. DUNLAP. After all the discussion which has been had, we cannot agree upon any one view of this subject. I could agree to the report, if a good many provisions were embodied in it, and will read what I would propose to introduce.

(Mr. D. here read a paper which seemed to be a burlesque upon the report. It was offered, however, in a jocose spirit, and evidently with a view to alter the tenor of the discussion.)

Dr. PEET. I imagine that paper is intended to cast ridicule upon the report of the committee. I take it, sir, that in none of our Institutions would those who manage the expenditures, be so lost to a sense of propriety, or so utterly regardless of their reputation, as to furnish a bill for ardent spirits for their own Institutions.

Mr. MACINTIRE. I have heard of one benevolent Institution in Ohio where bills, amounting to over \$500, were charged in one year for ardent spirits; but it was not, I am happy to say, a Deaf-Mute, but a crazy Asylum.

Mr. PORTER. It strikes me, sir, that it is hardly becoming in the members of this Convention to undertake to decide this question. Their opinion can, I think, hardly be entitled to respect as that of disinterested and unbiassed judges. For they are nearly all either Principals and Superintendents of Institutions, or expecting so to be.

Dr. PEET. I am fully aware that the position of a man, especially in business matters, is very likely to influence his opinions in certain cases. I am very sorry that the gentleman from Hartford has insinuated that those who have expressed an opinion in favor of the sentiments contained in the report, are influenced by sinister motives. I, for one, certainly disclaim any such motives; and, I think, if that is the only argument that can be brought against the adoption of that report, it will be found to have little effect upon this Convention in their action with reference to it. I believe that report is carried out practically to a greater or less degree; and I will state that there is more despotism exercised in the American Asylum at Hartford than in any other Institution I know of. Notwithstanding that there

is a Faculty there, it has been admitted by a representative from Hartford, on this floor, that the power to appoint instructors is vested in the Principal.

Mr. PORTER. A new instructor is first engaged by the Directing Committee, as it is called. The person thus nominated is employed on trial for three months, and is not an officer of the Institution, till regularly appointed by the Board.

Dr. PEET. What is there in this report that is recommended by the Committee? It is simply that the Principal of an Institution should cast about and see who is the most suitable man to supply the wants of the Institution in a particular department. He gets recommendations from those who know him; he has a personal interview with him; sees what his qualifications are by his conversation; and, being pleased with him, files his recommendations, and subsequently refers them to the Committee of Instruction, or the Board of Trustees; and this Board, on the evidence presented of his qualifications, appoint this man. That is the whole of it. I think they go a little further in Hartford; for I am quite sure I have known of instances where the Principal engaged gentlemen, on his own responsibility, to occupy posts in the Institution, and they were actually discharging the duties before the matter came before the Board; so that I do not see, in point of fact, any difference between the recommendations contained in that report, and the practice now pursued in the American Asylum at Hartford, though that report is condemned, and those who advocate it stigmatised as persons who are influenced by sinister considerations.

Mr. PORTER. Though the question here introduced seems not very important in the discussion of the report, I must beg leave to say again that the Principal of the American Asylum has no appointing power. It is true, that in my case, as in that of others, my services were engaged by the Principal, acting in behalf of the committee, and his action being subject to their approval; but I was not a regular Instructor until appointed by vote of the Board of Directors.

Dr. PEET. May I inquire, if in the event of the gentleman's being engaged and acting for three months, he is recognized as being appointed or not? The Principal has no power, the gentleman says; but he appointed him, sent him to his employment

for three months, and then recommended him. This looks very much like an appointment. It is practically one. The subsequent action of the Board was nothing more than a mere formality.

Mr. STONE. The fact is this: the Board sends the Principal to select a man; he finds one, recommends him to the Board and his appointment is made. The Principal simply goes as the agent of the Board to select him.

Mr. PORTER. When I was engaged, the Principal simply informed me, that he had no doubt that the committee would accept his recommendation and confirm the engagement. I am confident that he was never known to transcend his proper power. I appeal to Mr. Gallaudet, recently engaged, whether it was not the same in his case. [Mr. G. signified that it was so.]

Some conversation arose as to whether the provisions in the report were understood to apply to the old as well as the new Institutions; and it being generally conceded that such was the intention, and that they had a general application; the question on the adoption of the report, was put, and decided in the affirmative.

Mr. COOKE offered the following resolution:

*Resolved*, That a committee of three be appointed to take into consideration the best course of instruction for the Deaf and Dumb, together with the proper time during which pupils shall be allowed to remain at the Institutions; and such other matters connected with this subject as may, in their opinion, be important, and report to the next Convention.

The resolution was adopted, and the following committee appointed: Messrs. Porter, Stone and Cooke.

Mr. STONE offered the following preamble and resolution:

*Whereas*, since the meeting of the last Convention, it has pleased an all-wise Providence to remove by death the late editor of the American Annals, Luzerne Rac, Esq., an active and distinguished member of our profession: therefore,

*Resolved*, That this Convention would hereby express its appreciation of his brilliant talents, his sincere interest in, and valuable services rendered to our work, and its profound sorrow for the bereavement experienced by the profession in his death.

They were adopted.

Mr. O. W. MORRIS offered the following resolution:

*Resolved*, That a Committee be appointed in each State represented in this Convention, to memorialize the Legislatures of their respective States to estab-

lish asylums for the education of Idiots, as soon as practicable, where such have not been established.

Mr. MACINTIRE. I think that subject does not properly belong to our department of labor. We have many questions for our consideration connected with the education of the Deaf and Dumb, without devolving upon us any more duty in this regard. I suppose this movement was suggested by the interest which a certain Superintendent from one of the Kentucky Institutions has taken in the matter. He, I understand, has collected many statistics upon this head, and has brought the subject under the consideration of the Legislature of his State. I believe it is very doubtful whether many of us have the proper time to secure the necessary action upon this subject. I should not like to have such a duty imposed upon me by this Convention. I do not think it is our business to undertake this labor. I hope the resolution will not be adopted.

Mr. GILLET. I do not see how this imposes any duty upon us. The object is merely to promote the matter to the extent of memorializing the Legislature of our respective States, and accordingly I would suggest that Mr. Morris be appointed a committee to get the views of others upon the subject, as also all the information necessary, and have them forwarded to other individuals.

Mr. SKINNER. I think that in this matter, as in all others, we should act with proper deliberation. I cannot agree to the resolution as it stands, but I have no objection to an equivalent resolution in this form.

Now, sir, in our own State, the provisions which the Legislature has made for the education of the Deaf, Dumb and Blind, have never been adequate to the wants of the State in this regard. I think that if appropriations be made, they should be so appropriated as to do the largest amount of good to this class of persons; and until the State shall provide for the education of all the Deaf and Dumb of the State, I should object to memorializing the Legislature for the purpose set forth in the resolution. Let them first do all that is necessary to be done for the education of the Deaf, Dumb and Blind of the State, and then will be the time to act in the manner proposed.

Mr. STONE. There are many benevolent individuals in our State and elsewhere who have this work in hand, and, I think,

they are more likely to accomplish it than we should be. Many of them have certainly more time to attend to it than we have.

Mr. MORRIS. My object in offering the resolution was not that any person should be burdened by additional labor, but that the object may be promoted with the smallest amount of inconvenience. I did not apprehend that any discussion would grow out of it.

The resolution was withdrawn.

Mr. MACINTIRE. I move that we now go into the election of the Executive Committee, on the publication of the Annals, by nomination.

Dr. PEET. I suppose that that would be the quickest way; but you will perceive that it is a delicate mode of proceeding; for instance, if a gentleman is nominated, and there are objections to him, the individual entertaining them will be delicate to express them openly, when, if he is allowed to ballot, he will ballot for whomsoever he pleases. I move to amend the motion, by substituting the ballot system.

Mr. MACINTIRE. I accept the amendment.

The election was then proceeded with, and resulted in the choice of Messrs. Turner, Peet and Stone.

Mr. DUNLAP offered the following resolution, which was adopted:

*Resolved*, That the thanks of this Convention be tendered to James H. Skinner, Esq., for the deep interest he has manifested in the cause of Deaf and Dumb education, by consenting to preside over the deliberations of this body, and also for the efficient and faithful manner in which he has discharged the duties of his office, and whose intelligence, dignity and impartiality have won for him the lasting friendship and esteem of all its members.

Mr. KEEP offered the following resolution:

*Resolved*, That the thanks of this Convention are hereby tendered to the citizens of Staunton, for their polite attention and generous hospitality to the members of this Convention.

Adopted.

Mr. MORRIS offered the following resolution:

*Resolved*, That the thanks of this Convention are justly due, and are hereby tendered to the President, Board of Visitors, Principal, and Assistant Principal of the Virginia Institution for the Deaf and Dumb and the Blind, for the accom-



modations and abundant facilities afforded to this body for the transaction of business; for the great kindness and attention shown to the individual members; and for the generous provisions to secure their comfort during the sitting of the Convention.

The resolution was adopted.

Mr. WALKER offered the following resolution :

*Resolved*, That the thanks of this Convention be tendered to the Secretaries for the faithful, efficient and acceptable manner in which they have discharged the laborious duties of their offices.

Dr. PEET. I rise to say a word in favor of that resolution. I have attended every Convention held from the beginning to the present time, and I can say, with the utmost sincerity, that so far as I have discovered, on no former occasion have we been more fortunate in the appointment of secretaries than at present. I think the minutes have been kept in a manner highly creditable to the gentlemen who have performed the service.

The resolution was adopted.

Mr. TALBOT. I thank the Convention for this kind testimony which has been tendered to me, for the portion of the duties which I have discharged, as one of the secretaries, and desire to congratulate the Convention upon the satisfactory manner in which their labors have terminated.

Mr. GALLAUDET. I beg leave to add my thanks to those tendered by the gentleman who has just taken his seat. I sincerely thank the Convention for the resolution just adopted, and trust they will overlook any delinquency which may have occurred in the discharge of the duties which you have imposed in part upon me.

Mr. TURNER, a Deaf-Mute Instructor in the Virginia Institution for the Deaf and Dumb, offered the following resolution :

*Resolved*, That the thanks of this Convention be presented to Messrs. Gillet and Morris for their kindness in interpreting its proceedings for the benefit of the Deaf and Dumb Teachers and Visitors.

Adopted.

Mr. GILLET. I certainly am highly complimented by the resolution just offered and so kindly adopted, and the more so, as it comes from one of those for whose immediate interest and advan-

tage the labors of Mr. Morris and myself, as interpreters, have been designed. While I regret that, in the wisdom of the Convention, the duties of interpreter were imposed upon one so feebly qualified for the task, and so little deserving the honor attending them, allow me to express my gratitude for this mark of appreciation of the spirit in which they have been performed, though the manner of their discharge has been so imperfect.

Mr. DUNLAP offered the following resolution, which was adopted:

*Resolved*, That the thanks of this Convention are justly due and hereby tendered to the Publication Committee, for their faithful services in preparing the proceedings of the last Convention for publication, and for the neat and efficient manner in which the services have been performed.

Mr. KEEP offered the following resolution:

*Resolved*, That a committee of three persons be appointed, to whom shall be committed the minutes and papers submitted to the Convention, to prepare them for publication.

Committee: Messrs. Merillat, Keep and Morris.

Mr. GILLET. I will avail myself of the present opportunity to respectfully extend a cordial invitation to the Convention to hold it next session at the Illinois Institution for the Education of the Deaf and Dumb at Jacksonville.

Mr. STONE. I move that when the Convention adjourns, it adjourn to meet again at Jacksonville, Illinois.

He subsequently withdrew the motion.

Dr. PEET having expressed an intention of offering a resolution embodying an acceptance of the invitation and specifying the time of meeting.

Mr. MACINTIRE offered the following resolution:

*Resolved*, That an Executive Committee of five members of the Convention be appointed to act as the representatives of the Convention during the recess.

The resolution was adopted and the following committee appointed: Messrs. Peet, Stone, Gillet, Cooke and Brown.

Mr. DUNLAP offered the following resolution:

*Resolved*, That the thanks of this Convention be presented to the President and Directors of the Orange and Alexandria Railroad and the Virginia Central

Railroad Company, for the interest they have manifested in the cause of Deaf and Dumb instruction, in passing the delegates of the Convention over their roads free of charge.

Dr. PEET then offered the following resolution, which was also adopted :

*Resolved*, That the invitation presented by the Illinois Institution be accepted, and that when this Convention adjourns, it adjourn to meet at Jacksonville on the second Wednesday of August 1858, and that, P. G. Gillet be appointed the local committee of arrangements.

The minutes were then read and approved, and Mr Cooke moved that the Convention do now adjourn as before specified.

Before announcing the result of the vote upon the motion to adjourn, Mr. Skinner said :

*Gentlemen of the Convention.*—I return you my thanks for the very high, but undeserved compliment you have paid me in the acknowledgments you have made of my services. Indeed, gentlemen, it is I who am indebted to you for the privilege you have extended to me of being so intimately associated with you in your very interesting proceedings. I am sure there is no one invested with a spark of humanity, who has considered the praiseworthy ends you have in view, and has witnessed the zeal and assiduity which you have brought to their service, who does not feel that it "is good for him to be here." Persevere, I pray you, in your hopeful labors. You are rearing a monument which reaches like the famed tower of old—but in a higher sense—towards heaven. May no unworthiness of motive ever taint your enterprise or confound your efforts ; rather may that "brotherly love continue," which you have so strikingly manifested on this occasion.

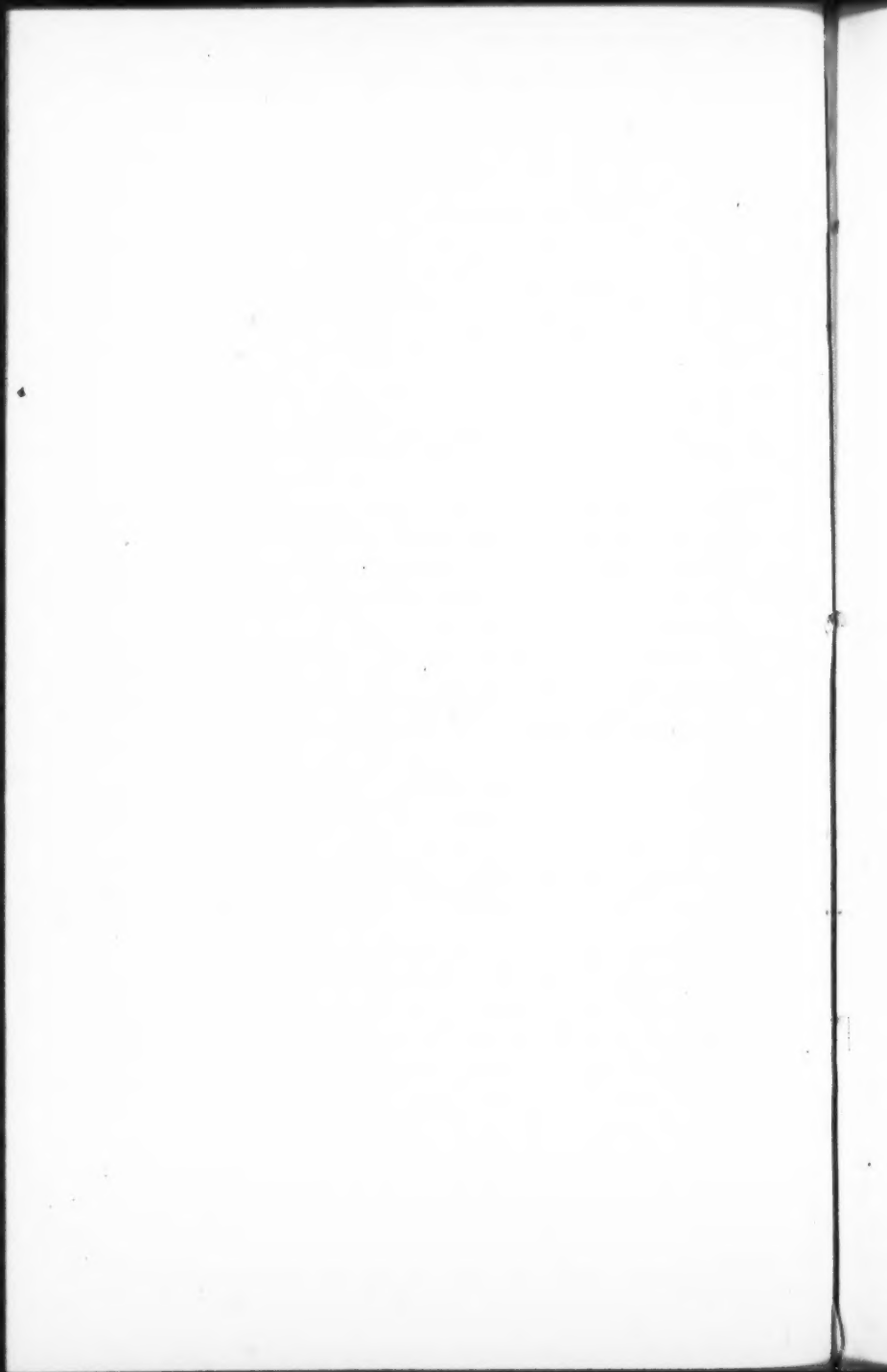
Gentlemen, the task which you have imposed upon yourselves is onerous, but to its faithful fulfillment there is attached the promise of a rich "recompense of reward." I do not believe that anything which I might say could "add vigor to the virtuous energies which inspire your hearts ;" but should there, perchance, be any among you who require encouragement, I cannot better convey it than in the beautiful words in which a poet has clothed an Eastern legend :

"Abon Ben Adhern, may his tribe increase,  
Awoke one night from a deep dream of peace,

And saw, within the moonlight of his room,  
 Making it rich and like a lily in bloom,  
 An Angel writing in a book of gold.  
 Exceeding peace had made Ben Adhern bold,  
 And to the presence in the room he said,  
 What writest thou? The vision raised his head,  
 And, in a voice made of all sweet accord,  
 Answered, the names of those who love the Lord.  
 And is mine one? asked Adhern. Nay, not so,  
 Replied the Angel. Abon spoke more low  
 But cheerily still, I pray thee then  
 Write me as one who loves his fellow men.  
 The Angel wrote and vanished. The next night  
 He came again with a great wakening light,  
 And showed the names whom love of God had blessed,  
 And lo! Ben Adhern's name led all the rest."

I will not attempt to point so plain a moral, nor can I add anything thereto. Do you take it unto yourselves, and should you at anytime feel overburdened with toils, or disappointed by the cares and anxieties which will necessarily beset your way, think upon these words and be comforted.

In conclusion, let me say that while it was as strangers I gave you welcome, it is now as friends, and with best wishes for your welfare, that I bid you adieu, and pronounce that the Convention stands adjourned.



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